[redacted]

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1927

No. 620

THE UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "PROTEUS," PETITIONER

vs.

COMMONWEALTH AND DOMINION LINE (LTD.), AS OWNER OF THE STEAMSHIP "PORT PHILIP"

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

INDEX

	Original	Print
Record from District Court of the United States, Eastern New York	1	1
Statement, Dominion Line *vs.* United States	1	1
Order for notice to Attorney General	3	1
Affidavit of Allan B. A. Bradley	4	2
Exhibit A—An act for the relief of Commonwealth Dominion Line	6	3
Libel	8	4
Answer	15	7
Statement, United States *vs.* Dominion Line	21	10
Cross libel	22	10
Answer to cross libel	27	12
Statement of evidence	34	16
Appearances of counsel	34	16
Offers in evidence	34	16
Testimony of—		
John Jack	35	16
George S. Hall	68	35
Anthony Cannavale	81	42
Frank A. Butler	98	52
John Anderson	100	53
Claude Hersee	105	56
John Anderson (recalled)	105	56
Claude Hersee (recalled)	105	56
Frederick Blomquist	110	59
Vincent J. Riker	114	61
John W. Ackerman	119	64

Record from District Court of the United States, Eastern New York—Continued.

	Original	Print
Statement of evidence—Continued.		
Offers in evidence	128	70
Testimony of Neils Soren Hansen	129	70
Libellant's Exhibit 1.—Stipulation and testimony of Thomas A. Leinster	180	97
Libellant's Exhibit 2.—Stipulation and testimony of Louis Spaniol	188	102
Exhibit 1.—Report of assistance rendered	210	114
Libellant's Exhibit 3.—Stipulation and testimony of George Gormly	212	115
Respondent's Exhibit A.—Testimony of William Wallace	215	117
United States Exhibit 1.—Diagram	243	133
United States Exhibit 2.—Copy of log, U. S. S. "Proteus"	244	134
Libellant's Exhibit 1.—Notice to produce	248	138
Respondent's Exhibit B.—Testimony of George R. Breed	250	139
United States Exhibit 1.—Diagram	274	152
Respondent's Exhibit C.—Stipulation and testimony of William W. McGee	275	153
United States Exhibit 17.—Diagram	283-A	159
Respondent's Exhibit D.—Stipulation and testimony of Lewis Prenny	284	160
United States Exhibit 17.—Diagram (copy) [omitted in printing]	288	161
Respondent's Exhibit E.—Stipulation and testimony of Patrick J. Murray	289	162
United States Exhibit 15.—Extract from engineer's rough sheet	293	164
Respondent's Exhibit F.—Stipulation and testimony of Harold C. Peterson	294	165
Respondent's Exhibit G.—Stipulation and testimony of Everett H. Mason	299	167
Notes re libellant's Exhibits 1 to 10, inclusive	303	169
Libellant's Exhibit 11.—Diagram	305	170
Libellant's Exhibit 12.—Note book entries	307	171
Libellant's Exhibits 13 and 14.—Diagrams	309	173
Libellant's Exhibit 15.—Notice to produce	311	175
Libellant's Exhibit 16.—Copy of deck log, U. S. S. "Proteus"	313	176
Notes re respondent's Exhibits A to H, inclusive	316	177
Respondent's Exhibits I and J.—Diagrams	318	178
Respondent's Exhibit K.—Correspondence	320	180
Affidavit and order to show cause	329	184
Order for production "Proteus" original engineer's rough log sheet	335	187
Opinion on merits, Campbell, J	338	189
Opinion disallowing interest on damages	350	193
Final decree and stipulation	352	196
Notice of appeal by United States of America	356	198
Assignment of error by United States of America	358	198
Notice of appeal by Commonwealth & Dominion Line	363	200

	Original	Print
Record from District Court of the United States, Eastern New York—Continued.		
Assignment of error by Commonwealth & Dominion Line	365	201
Stipulation re exhibits	366	201
Stipulation re record	368	202
Clerk's certificate [omitted in printing]	369	202
Proceedings in United States Circuit Court of Appeals, Second Circuit	370	202
Opinion, Hand, J	370	202
Decree	374	207
Petition for reargument	376	208
Order denying petition for rehearing	385	212
Clerk's certificate [omitted in printing]	387	212
Order allowing certiorari	388	212

1 In United States District Court, Eastern District of New York

COMMONWEALTH & DOMINION LINE (LTD.) AS OWNER OF THE STEAMship "Port Phillip," libellant

against

THE UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "Proteus," respondent

Statement

1923
May 3. Order directing notice of suit, entered.
May 5. Libel filed.
Sept. 11. Answer filed.
1925
April 30. Affidavit and order to show cause.
May 1. Order for production "Proteus'" original engineer's rough log sheet.
May 6-7. Cause tried before Marcus B. Campbell, D. J.
Oct. 13. Opinion filed.
1926
July 14. Opinion disallowing interest on damages filed.
July 14. Final decree entered.
Sept. 29. Notice of appeal filed by U. S. A.
Sept. 29. Assignment of errors filed by U. S. A.
Oct. 11. Notice of appeal filed by Commonwealth & Dominion Line.
Oct. 11. Assignment of error filed by Commonwealth & Dominion Line.

2 In United States District Court

COMMONWEALTH & DOMINION LINE (LTD.) LIBELLANT

against

UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "Proteus," respondent

Order for notice to Attorney General, May 3, 1923

It appearing that an act was passed by the United States Senate and House of Representatives, said act having been approved March 4, 1923, whereby the claim of the Commonwealth & Dominion Line (Ltd.), owner of the British steamer Port Phillip against the United States arising out of the collision between said steamer "Port Phillip" and the United States steam collier "Proteus" in New York Harbor on October 16, 1918, may be sued for by the said Commonwealth & Dominion Line (Ltd.), in the District Court of the United States for the Eastern District of New York, sitting as a court of admiralty and

acting under the rules governing such court, and whereby
3 jurisdiction is conferred upon said court to hear and determine such suit and to enter a judgment or decree for such damages, exclusive of demurrage, as shall be found to be due against the United States in favor of the said Commonwealth & Dominion Line (Ltd.), or against said Commonwealth & Dominion Line (Ltd.), in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal.

And it further appearing that it is provided in said act that such notice of said suit shall be given to the Attorney General of the United States as may be provided by the order of this court.

And it further appearing that Commonwealth & Dominion Line (Ltd.) on May 3, 1923, filed its libel in the office of the clerk of this court against the United States seeking recovery of damages growing out of said collision.

Now upon the affidavit of Allan B. A. Bradley, verified May 3, 1923, and on motion of Lord, Day & Lord, proctors for the libellant, it is hereby

Ordered that notice of said suit be given to the Attorney General of the United States by mailing by registered mail a copy of said libel and of this order and of the annexed affidavit of Allan B. A. Bradley, verified May 3, 1923, to the Attorney General of the United States directed as follows: "Attorney General of the United States, Department of Justice, Washington, D. C." and it is further

Ordered that a copy of said libel, of this order and of said
4 affidavit be served upon the United States attorney for the Eastern District of New York.

EDWIN L. GARVIN,
U. S. D. J.

In United States District Court

COMMONWEALTH & DOMINION LINE (LTD.) LIBELLANT

against

UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "Proteus," respondent

Affidavit of Allan B. A. Bradley

STATE OF NEW YORK,
County of New York, ss.:

Allan B. A. Bradley, being duly sworn, says:

I am an attorney at law and a proctor in admiralty and a member of the firm of Lord, Day & Lord, proctors for the libellant herein.

An act entitled "An act for the relief of the Commonwealth & Dominion Line (Ltd.), owner of the British steamship 'Port Phillip'," was passed by the Senate and House of Representatives of the United States and House of Representatives of the United States of America and approved by the President on March 4, 1923, said act

providing that the claim of the Commonwealth & Dominion
5 Line (Ltd.), owner of the British steamer "Port Phillip" against the United States for damages and loss alleged to have been caused by the collision of said vessel with the United States steam collier "Proteus" in New York Harbor on October 16, 1918, may be sued for by the said Commonwealth & Dominion Line (Ltd.), in the District Court of the United States for the Eastern District of New York, sitting as a court of admiralty and acting under the rules governing such court, and said act further conferring jurisdiction upon said court to hear and determine such suit and to enter such decree in favor of the Commonwealth & Dominion Line (Ltd.), or in favor of the United States as might be just and proper upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal, and said act further providing that such notice of the suit shall be given to the Attorney General of the United States as may be provided by the order of this court. A copy of said act is hereto annexed and marked "Exhibit A." Pursuant to said act, Commonwealth & Dominion Line (Ltd.), on May 3rd, 1923, filed its libel against the United States for damages growing out of said collision in the office of the clerk of this court.

Wherefore, I respectfully request that an order be made by this court providing that notice of said suit be given to the Attorney General of the United States by mailing by registered mail a copy of said libel, of said order of this court and of this affidavit to the Attorney General of the United States addressed as follows: "Attorney General of the United States, Department of Justice,
6 Washington, D. C." and that this court will also direct that copies of said libel, order, and affidavit be served upon the United States attorney for the Eastern District of New York.

ALLAN B. A. BRADLEY.

Sworn to before me this 3rd day of May, 1923.

[SEAL.] CHARLES OSGOOD, Jr.,
Notary Public, New York Co.

Clerk's No. 140; register's No. 4125.
Commission expires March 30, 1924.

Exhibit "A"

(Private No. 256, 67th Congress—H. R. 8051)

An act for the relief of the Commonwealth and Dominion Line (Limited), owner of the British steamship "Port Phillip"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the claim of the Commonwealth and Dominion Line (Limited), owner of the British Steamer "Port Phillip" against the United States for damages and loss alleged to have been caused by the collision of said vessel with

the United States steam collier "Proteus" in New York
7 Harbor on October 16, 1918, may be sued for by the said owner of the British steamer "Port Phillip" in the District Court of the United States for the Eastern District of New York, sitting as a court of admiralty and acting under the rules governing such court; and said court shall have jurisdiction to hear and determine such suit to the extent only of such damage suffered other than claims for demurrage to said vessel and to enter a judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of the owner of the British steamer "Port Phillip" or against said owner in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal: *Provided*, That such notice of the suit shall be given to the Attorney General of the United States as may be provided by order of the said court, and it shall be the duty of the Attorney General to cause the United States attorney in such district to appear and defend for the United States: *Provided further*, That said suit shall be brought and commenced within four months of the date of the passage of this act.

Approved, March 4, 1923.

8 In United States District Court

Libel

To the honorable the judges of the District Court of the United States for the Eastern District of New York:

(Libel filed pursuant to the act of Congress, approved March 4, 1923, authorizing this suit.)

The libel of Commonwealth & Dominion Line (Ltd.), owner of the steamship "Port Philip" against the United States of America, owner of the United States steam collier "Proteus," in a cause of collision, civil and maritime, alleges upon information and belief:

First. That heretofore and by an act of the Congress of the United States of America, duly approved by the President of the United States of America on March 4, 1923, entitled "An act for the relief of the Commonwealth and Dominion Line (Ltd.), owner of the British steamship 'Port Phillip,' " it was enacted among other things that the claim hereinafter set forth might be sued for by the libellant herein against the United States in the District Court of the United States for the Eastern District of New York, sitting as a court of admiralty and acting under the rules governing said court, and that said court should have jurisdiction to hear and determine such suit and to enter a judgment or decree for the amount of such damages and costs, if any, as should be found to be due against the United States in favor of libellant as owner of said steamship "Port Phillip" or against the owner of said steamship "Port Phillip" in

favor of the United States upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal.

Second. Libellant is a corporation duly organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and at the times hereinafter mentioned was the owner of the British steamship "Port Phillip."

Third. Respondent, the United States of America, is a corporation sovereign, and at the times hereinafter mentioned was the owner of the United States twin screw steam collier "Proteus."

Fourth. The steamship "Port Phillip" was a single-screw steamship 390 feet long over all, of 49.1 feet beam, 4,060 tons gross, and 2,586 tons net register. On October 16, 1918, until the collision hereinafter mentioned, said steamship "Port Phillip" was in all respects tight, strong, staunch, and seaworthy, and properly and efficiently manned and equipped. She was in command of competent officers.

Fifth. On October 16, 1918, the "Port Phillip" which had been lying at anchor in the anchorage grounds, off Norton Point, lower New York Bay, left her anchorage, bound out, intending to pick up a convoy outside the harbor. The tide was ebb, there was a light westerly breeze, and the visibility was good. All hands were at their stations; the master, a competent Sandy Hook pilot, and the third officer were on the bridge with a quartermaster at the wheel. The chief officer with the boatswain and carpenter were stationed forward on the forecastle head, keeping a lookout. The second officer was aft keeping his eye on the steering gear; all the engineers were at their stations.

Sixth. At 9.48 a. m. the order stand by was given and the anchor was hove up. At 9.57 a. m. the anchor was aweigh and the "Port Phillip" before turning around so as to make for Ambrose Channel, proceeded ahead in a northerly direction in order to clear two steamers anchored slightly on her port bow and ahead of her. When the "Port Phillip" had passed these vessels the helm was put to starboard and the vessel turned until she was heading in a westerly direction for Hoffman Island, a single blast was sounded on her whistle, and the helm was steadied. It was the intention of the pilot of the "Port Phillip" to cross to the westerly side of the channel and turn to the south and so pass out of the harbor. At this time a large steam collier, which subsequently turned out to be the "Proteus" and which had previously been observed coming up Ambrose Channel, was between a mile and three-quarters of a mile away steaming up the middle of the channel at a high rate of speed. The "Proteus" at this time was in a nice position to pass astern of the "Port Phillip" with a slight port helm, which those in charge of the navigation of the "Port Phillip" expected her to do. The "Port Phillip" blew a signal of one blast which was not answered by the "Proteus." This signal of the "Port Phillip" was repeated several times, the "Proteus" meantime coming on with undiminished speed and heading about

for the bridge of the "Port Phillip." The "Proteus" finally replied to the last single blast referred to by a signal of two blasts
11 and swung to port under starboard helm with the apparent intention of crossing the "Port Paillip's" bow. The "Port Phillip" at once blew the alarm signal, followed by one blast, which signals were repeated by the "Port Paillip." When the "Proteus" had swung to port so that she was heading for the "Port Paillip's" forecastle head she again altered her course and her head swung off to starboard. When this occurred the "Port Phillip's" helm was at once put hard astarboard and her engines extra full ahead in an endeavor to throw her stern away from and clear of the "Proteus," so as to allow the "Proteus" to pass astern, but the "Proteus" came on with undiminished speed and crashed into the "Port Phillip's" port quarter about 30 feet from the stern, tearing a great hole in her side. The blow led aft. The collision occurred at 10.15 a. m. The force of the collision threw the "Port Phillip's" stern to starboard and her bow to port and had the same effect upon the "Proteus." The engines of the "Port Phillip" were stopped; the "Proteus" remained with her stem in the side of the "Port Phillip" for about a minute and then backed out, leaving a gaping hole through which the water rapidly poured. An attempt was made to beach the "Port Phillip" off West Bank, but she settled too rapidly to accomplish this and sank off West Bank in about 40 feet of water and became a total loss.

Seventh. Upon information and belief said collision was not caused or contributed to by any negligence or carelessness on the part of the "Port Phillip" or of those in charge of her, but was caused solely by the negligence of the collier "Proteus" and of those in charge of
12 her in the following among other particulars which will be pointed out on the trial of this suit:

1. In that the "Proteus" having the "Port Phillip" on her own starboard hand failed to keep out of the way of the "Port Phillip."

2. In that the "Proteus" blew a cross signal of two whistles in answer to the "Port Phillip's" signal of one whistle.

3. In that the "Proteus" when in a nice position to pass astern of the "Port Phillip" starboarded her helm and wrongfully endeavored to cross the "Port Phillip's" bow and then ported her helm and tried to go astern of the "Port Phillip" when it was too late to do so.

4. In that the "Proteus" failed to keep a proper or efficient look-out.

5. In that the "Proteus" did not seasonably stop or reverse her engines.

6. In that the "Proteus" proceeded at an immoderate rate of speed up a narrow and crowded channel.

7. In that the "Proteus" failed to heed the whistle signals of the "Port Phillip" and failed by proper whistle signals to indicate her own manoeuvers.

8. In that those in charge of the "Proteus" were incompetent and inattentive to their duties.

9. In that the "Proteus" was so carelessly and negligently manoeuvred as to bring about the said collision.

Eighth. As a result of said collision the said "Port Phillip" became a total loss and libellant sustained damages in the sum of seven hundred and fifty thousand ($750,000) dollars, no part of which has been paid, although duly demanded.

Ninth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court as conferred upon this court by the act of Congress above referred to.

Wherefore libellant prays that a citation may issue against the United States of America causing it to appear and answer the matters aforesaid and that the libellant may have such other and further relief in the premises as in law and justice may be proper.

LORD, DAY & LORD,
Proctors for Libellant.

Office & P. O. address, 25 Broadway, Borough of Manhattan, City of New York.

Duly sworn to by Allan B. A. Bradley; jurat omitted in printing.

In United States District Court

Answer

To the honorable the judges of the United States District Court for the Eastern District of New York:

The answer of the United States of America, as owner of the U. S. steam collier "Proteus," to the libel of the Commonwealth and Dominion Line (Ltd.) in a cause of collision, civil and maritime, alleges upon information and belief and respectfully shows to this honorable court as follows:

First. Respondent admits the allegations of article first of thelibel except that it alleges that the act of Congress referred to therein limits the jurisdiction of this court to hear and determine this suit to the extent only of the damages suffered by libellant other than claims for demurrage to the steamship "Port Phillip."

Second. Respondent denies any knowledge or information sufficient to form a belief as to the allegations of article second of the libel.

Third. Respondent admits the allegations of article third of the libel.

Fourth. Respondent denies any knowledge or information sufficient to form a belief as to the allegations of article fourth of the libel.

Fifth. Respondent admits that at the time mentioned in article fifth of the libel the tide was ebb, there was a light westerly breeze, and the visibility was fair. Further answering, respondent denies any knowledge or information sufficient to form a belief as to the other allegations of article fifth of the libel.

16 Sixth. Respondent denies that the true facts and circumstances surrounding the collision are as set forth in article sixth of the libel and refers this honorable court to the allegations of article tenth of this answer for the same.

Seventh. Respondent denies the allegations of article seventh of the libel.

Eighth. Respondent admits that libellant has demanded the sum of $750,000.00 and that no part thereof has been paid. Further answering, respondent denies any knowledge or information sufficient to form a belief as to the other allegations of article eighth of the libel.

Ninth. Respondent admits the admiralty and maritime jurisdiction of the United States and of this honorable court to the extent conferred by the act of Congress referred to and denies the other allegations contained in article ninth of the libel.

Tenth. Further answering, respondent alleges that the true facts and circumstances surrounding the collision are as follows:

On October 16, 1918, the "Proteus" was a public vessel of the United States, operated as a collier, fully officered and properly manned by a crew of the United States Navy, and was, previous to the collision hereinafter described, tight, staunch, and strong and in all respects seaworthy. On the forenoon of said day, the "Proteus" was bound from Newport News to New York with a cargo of coal and was proceeding northerly in Ambrose Channel, keeping a course close to the buoys on the starboard side. The weather was hazy, wind light westerly, tide ebb. The master of the "Proteus"
17 was in charge of her navigation and was on the bridge with a lieutenant and chief quartermaster; an ensign was stationed at the telegraph and a quartermaster at the wheel. A careful and proper lookout was kept at all times. A number of steamers were lying at anchor off Norton Point on the starboard hand of the "Proteus" and close to the fairway. The channel was clear. Shortly after passing the northerly buoy on the starboard or easterly side of Ambrose Channel, the bow of a steamer, which proved to be the "Port Phillip," was observed a short distance ahead on the starboard bow of the "Proteus" standing out between two of the anchored vessels and apparently heading across the channel. The "Proteus" immediately sounded two blasts of her whistle indicating her intention of passing ahead of the "Port Phillip," which was answered by a one blast signal from the "Port Phillip." As the vessels were already in close quarters the "Proteus" immediately replied with a single blast of her whistle, put her helm hard aport and her engines full speed astern, followed by three blasts of the whistle, in an effort to go astern of the "Port Phillip." The "Port Phillip" sounded three blasts of her whistle, followed by alarms. At this time the vessels were dangerously close and collision was inevitable. The "Proteus" stopped her port engine, keeping the starboard engine full speed astern and her helm hard aport, endeavoring to strike a glancing blow, thereby minimizing the effect of the collision. However, the bow of the "Proteus" struck the "Port Phillip" on the port

side aft of amidship, severely damaging the "Port Phillip," as a result of which she afterwards sank. The collision occurred well on the easterly side of the channel in close proximity to the vessels anchored off Norton Point.

18 Eleventh. The collision and consequent damage were not caused or contributed to by any fault or negligence on the part of respondent or any person for whom respondent is responsible, but were due solely to the fault and negligence of the "Port Phillip" and those in charge of her in the following respects among others:

(1) She was not in charge of a competent person.

(2) She failed to keep a proper lookout.

(3) She attempted to leave her berth and proceed into the fairway from an obscured position without sounding a proper warning signal.

(4) She failed to stop and reverse her engines before proceeding into the fairway when the course and proximity of the "Proteus" was, or should have been, apparent.

(5) She failed to heed the two blast passing signal of the "Proteus."

(6) She crossed the two blast signal of the "Proteus" with a signal of one blast.

(7) After obtaining from the "Proteus" an acquiescence in her signal of one blast, she failed to navigate properly in accordance with the agreement.

(8) She reversed her engines and reduced her headway when the "Proteus" was attempting to go under her stern in accordance with the passing agreement instigated by the "Port Phillip."

(9) She failed to go full speed ahead so as to assist the "Proteus" in passing clear astern of her, after the agreement to do so had been reached.

19 (10) She obstructed the course of the "Proteus."

(11) She failed to take the precautions required by ordinary practice and/or the special circumstances of the case.

(12) Those in charge of the "Port Phillip" were incompetent and inattentive to their duties.

(13) Those in charge of the "Port Phillip" did nothing to avoid collision when danger thereof was, or should have been, apparent.

Twelfth. All and singular the premises are true.

Wherefore respondent prays that the libel herein be dismissed, with costs.

RALPH C. GREENE.
United States Attorney for the
Eastern District of New York,
Proctor for Respondent.

Office and P. O. address, Room 700, 45 Broadway, Borough of Manhattan, city of New York.

Duly sworn to by Charles E. Wythe; jurat omitted in printing.

21 In United States District Court, Eastern District of New York

UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "PROTEUS," CROSS LIBELLANT,
against
COMMONWEALTH & DOMINION LINE (LTD.), AS OWNER OF THE STEAMSHIP "PORT PHILLIP," CROSS RESPONDENT

Statement

1923
Nov. 16. Cross libel filed.
1924
Nov. 7. Answer filed.
1925
May 6-7. Cause tried before Marcus B. Campbell, D. J.
Oct. 13. Opinion filed.
1926
July 14. Opinion disallowing interest on damages filed.
July 14. Final decree entered.
Sept. 29. Notice of appeal filed by U. S. A.
Sept. 29. Assignment of errors filed by U. S. A.
Oct. 11. Notice of appeal filed by Commonwealth & Dominion Line.
Oct. 11. Assignment of error filed by Commonwealth & Dominion Line.

22 In United States District Court

Cross libel

To the honorable the judges of the United States District Court for the Eastern District of New York:

The cross libel of the United States of America, as owner of U. S. steam collier "Proteus," against Commonwealth and Dominion Line (Ltd.), in a cause of collision, civil and maritime, alleges upon information and belief and respectfully shows to this honorable court as follows:

First. At and during all the times hereinafter mentioned, the United States of America was and still is a corporation sovereign, and owner of the steam collier "Proteus," which, at the time of the collision hereinafter mentioned, was a public vessel of the United States operated as a naval collier, fully officered and properly manned by a crew of the United States Navy and was, previous to said collision, tight, staunch, and strong and in all respects seaworthy.

Second. At all of said times respondent, Commonwealth and Dominion Line (Ltd.), was and now is a corporation organized and existing under and by virtue of the laws of the United Kingdom of Great Britain and Ireland, and was the owner of the British steamship "Port Phillip."

Third. On October 16, 1918, in the forenoon of said day, the "Proteus" was bound from Newport News to New York with a

cargo of coal and was proceeding northerly in Ambrose Chan-
23 nel, keeping a course close to the buoys on the starboard side.
The weather was hazy, wind light westerly, tide ebb. The master of the "Proteus" was in charge of her navigation and was on the bridge with a lieutenant and chief quartermaster. An ensign was stationed at the telegraph and a quartermaster at the wheel. A careful and proper lookout was kept at all times. A number of steamers were lying at anchor off Norton Point on the starboard hand of the "Proteus" and close to the fairway. The channel was clear. Shortly after passing the northerly buoy on the starboard or easterly side of Ambrose Channel, the bow of a steamer, which proved to be the "Port Phillip," was observed a short distance ahead on the starboard bow of the "Proteus," standing out between two of the anchored vessels and apparently heading across the channel. The "Proteus" immediately sounded two blasts of her whistle indicating her intention of passing ahead of the "Port Phillip," which was answered by a one blast signal from the "Port Phillip." As the vessels were already in close quarters, the "Proteus" immediately replied with a single blast of her whistle, put her helm hard aport and her engines full speed astern, followed by three blasts of her whistle, in an effort to pass astern of the "Port Phillip." The "Port Phillip" sounded three blasts of her whistle, followed by alarms. At this time the vessels were dangerously close and collision was inevitable. The "Proteus" stopped her port engine, keeping the starboard engine full speed astern and her helm hard aport, endeavoring to strike a glancing blow, thereby minimizing the effect of the collision. However, the bow of the "Proteus" struck the "Port Phillip" on the port
side aft of amidship, severely damaging the "Port Phillip,"
24 as a result of which she afterward sank. The collision occurred
well on the easterly side of the channel in close proximity to the vessels anchored off Norton Point.

Fourth. The collision and consequent damage were not caused nor contributed to by any fault or negligence on the part of the "Proteus" or those in charge of her, but were due solely to the fault and negligence of the "Port Phillip" and those in charge of her in the following respects among others:

1. She was not in charge of a competent person.

2. She failed to keep a proper lookout.

3. She attempted to leave her berth and proceed into the fairway from an obscured position without sounding proper warning signals.

4. She failed to stop and reverse her engines before proceeding into the fairway when the course and proximity of the "Proteus" was, or should have been, apparent.

5. She failed to heed the two blast passing signal of the "Proteus."

6. She crossed the two blast signal of the "Proteus" with a signal of one blast.

7. After obtaining from the "Proteus" an acquiescence of her signal of one blast, she failed to navigate properly in accordance with the agreement.

8. She reversed her engines and reduced her headway when the "Proteus" was attempting to go under her stern in accordance with the passing agreement instigated by the "Port Phillip."

9. She failed to go full speed ahead so as to assist the "Proteus" in passing clear astern of her after the agreement to do so had been reached.

10. She obstructed the course of the "Proteus."

11. She failed to take the precautions required by ordinary practice and or the special circumstances of the case.

12. Those in charge of the "Port Phillip" were incompetent and inattentive to their duties.

13. Those in charge of the "Port Phillip" did nothing to avoid collision when danger thereof was, or should have been, apparent.

Fifth. By reason of the premises this libellant has sustained damage in the form of repairs and other expenses amounting to approximately one hundred thousand ($100,000) dollars, no part of which has been paid although duly demanded.

Sixth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore libellant prays that process in due form of law may issue, citing the respondent, Commonwealth and Dominion Line (Limited), to appear and answer on oath all and singular the matters aforesaid and that libellant may have a decree against respondent for its damages aforesaid and for such other and further relief as may be just.

RALPH C. GREENE,
United States Attorney for the Eastern District of New York.

Office & P. O. address, Room 700, 45 Broadway, Borough of Manhattan, City of New York.

Duly sworn to by Charles E. Wythe; jurat omitted in printing.

United States District Court

Answer to cross libel

To the honorable the judges of the District Court of the United States for the Eastern District of New York:

The answer of Commonwealth & Dominion Line (Ltd.), to the cross libel of the United States of America, as owner of the United States steam collier "Proteus," in a cause of collision, civil and maritime, upon information and belief.

First. Admits that the United States of America is a corporation sovereign, and at all the times mentioned in the cross libel was the owner of the steam collier "Proteus," which was a public vessel of the United States operated as a naval collier. It denies that it has any knowledge or information sufficient to form a belief as to the other allegations of the first article of the cross libel.

Second. Admits the allegations contained in the second article of the cross libel.

Third. Admits that on October 16, 1918, in the forenoon of that day the "Proteus" was proceeding northerly in Ambrose Channel; that there was a light westerly breeze and that the tide was ebb; that a number of steamers were lying at anchor off Norton Point on the starboard hand of the "Proteus"; that the channel was clear; that the "Port Phillip" blew alarm signals; that the bow of the "Proteus" struck the "Port Phillip" on the port side aft of amidships severely damaging the "Port Phillip" and that as a result thereof she afterwards sank. Denies that the "Proteus" was keeping a course close to the buoys on the starboard side
28 of the channel; that the weather was hazy; that a careful or proper lookout was kept on board the "Proteus"; that the "Proteus" sounded two blasts of her whistle before receiving a one blast signal from the "Port Phillip"; that the "Proteus" replied with a single blast of her whistle or immediately put her helm hard aport or her engines full speed astern, or that she blew three blasts of her whistle; denies that the "Port Phillip" blew three blasts of her whistle. It further denies that the collision occurred well on the easterly side of the channel or in close proximity to the vessels anchored off Norton Point.

Except as so admitted or denied, it denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in the third article of the cross libel and alleges that the true facts and circumstances of said collision are hereinafter set forth.

Fourth. Denies the allegations contained in the fourth article of the cross libel.

Fifth. Denies the allegations contained in the fifth article of the cross libel.

Sixth. Admits the admiralty and maritime jurisdiction of the United States and of this honorable court but denies the other allegations of the sixth article of the cross libel.

For a further and separate defense, it alleges upon information and belief:

Seventh. The steamship "Port Phillip" was a single screw steamship 390 feet long over all, of 49.1 feet beam, 4,060 tons gross and
29 2,586 tons net register. On October 16, 1918, until the collision hereinafter mentioned, said steamship "Port Phillip" was in all respects tight, strong, staunch and seaworthy, and properly and efficiently manned and equipped. She was in command of competent officers.

Eighth. On October 16, 1918, the "Port Phillip," which had been lying at anchor in the anchorage grounds, off Norton Point, lower New York Bay, left her anchorage, bound out, intending to pick up a convoy outside the harbor. The tide was ebb, there was a light westerly breeze, and the visibility was good. All hands were at

their stations; the master, a competent Sandy Hook pilot, and the third officer were on the bridge, with a quartermaster at the wheel. The chief officer, with the boatswain and carpenter, were stationed forward on the forecastle head, keeping a lookout. The second officer was aft keeping his eye on the steering gear; all the engineers were at their stations.

Ninth. At 9.48 a. m. the order standby was given and the anchor was hove up. At 9.57 a. m. the anchor was aweigh and the "Port Phillip," before turning around so as to make for Ambrose Channel, proceeded ahead in a northerly direction in order to clear two steamers anchored slightly on her port bow and ahead of her. When the "Port Phillip" had passed these vessels the helm was put to starboard and the vessel turned until she was heading in a westerly direction for Hoffman Island, a single blast was sounded on her whistle and the helm was steadied. It was the intention of the pilot of the "Port Phillip" to cross to the westerly side of the channel and turn to the south and so pass out of the harbor. At this
30 time a large steam collier, which subsequently turned out to be the "Proteus" and which had previously been observed coming up Ambrose Channel, was between a mile and three-quarters of a mile away steaming up the middle of the channel at a high rate of speed. The "Proteus" at this time was in a nice position to pass astern of the "Port Phillip" with a slight port helm, which those in charge of the navigation of the "Port Phillip" expected her to do. The "Port Phillip" blew a signal of one blast which was not answered by the "Proteus." This signal of the "Port Phillip" was repeated several times, the "Proteus" meantime coming on with undiminished speed and heading about for the bridge of the "Port Phillip." The "Proteus" finally replied to the last single blast referred to by a signal of two blasts and swung to port under starboard helm with the apparent intention of crossing the "Port Phillip's" bow. The "Port Phillip" at once blew the alarm signal followed by one blast, which signals were repeated by the "Port Phillip." When the "Proteus" had swung to port so that she was heading for the "Port Phillip's" forecastle head she again altered her course and her head swung off to starboard. When this occurred the "Port Phillip's" helm was at once put hard astarboard and her engines extra full ahead in an endeavor to throw her stern away from and clear of the "Proteus," so as to allow the "Proteus" to pass astern, but the "Proteus" came on with undiminished speed and crashed into the "Port Phillip's" port quarter about 30 feet from the stern, tearing a great hole in her side. The blow fell aft. The collision occurred at 10.15 a. m. The force of the collision threw the "Port Phillip's" stern to starboard and her bow to port and had the same effect
31 upon the "Proteus." The engines of the "Port Phillip" were stopped; the "Proteus" remained with her stem in the side of the "Port Phillip" for about a minute and then backed out, leaving a gaping hole through which the water rapidly poured. An

attempt was made to beach the "Port Phillip" off West Bank, but she settled too rapidly to accomplish this and sank off West Bank in about 40 feet of water and became a total loss.

Tenth. Upon information and belief said collision was not caused or contributed to by any negligence or carelessness on the part of the "Port Phillip" or of those in charge of her, but was caused solely by the negligence of the collier "Proteus" and of those in charge of her in the following among other particulars which will be pointed out on the trial of this suit:

1. In that the "Proteus" having the "Port Phillip" on her own starboard hand failed to keep out of the way of the "Port Phillip."

2. In that the "Proteus" blew a cross signal of two whistles in answer to the "Port Phillip's" signal of one whistle.

3. In that the "Proteus" when in a nice position to pass astern of the "Port Phillip" starboarded her helm and wrongfully endeavored to cross the "Port Phillip's" bow and then ported her helm and tried to go astern of the "Port Phillip" when it was too late to do so.

4. In that the "Proteus" failed to keep a proper or efficient lookout.

5. In that the "Proteus" did not seasonably stop or reverse her engines.

6. In that the "Proteus" proceeded at an immoderate rate of speed up a narrow and crowded channel.

32 7. In that the "Proteus" failed to heed the whistle signals of the "Port Phillip" and failed by proper whistle signals to indicate her own manoeuvers.

8. In that those in charge of the "Proteus" were incompetent and inattentive to their duties.

9. In that the "Proteus" was so carelessly and negligently manoeuvred as to bring about the said collision.

Eleventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court as conferred upon this court by an act of Congress approved March 4, 1923.

Wherefore the Commonwealth & Dominion Line (Ltd.), prays that the cross libel herein be dismissed and that it be granted such other and further relief as the justice of the cause may require.

LORD, DAY & LORD,
Proctors for Commonwealth & Dominion Line (Ltd.).

Office & P. O. address, 25 Broadway, Borough of Manhattan, City of New York.

Duly sworn to by Allan B. A. Bradley; jurat omitted in printing.

33, 34 In United States District Court

COMMONWEALTH & DOMINION LINE (LTD.), LIBELLANT

v.

THE UNITED STATES OF AMERICA, RESPONDENT

Statement of evidence

Before Hon. MARCUS B. CAMPBELL, U. S. D. J.

BROOKLYN, N. Y., *May 6, 1927.*

Appearances of counsel

Messrs. Lord, Day & Lord, by Allan B. A. Bradley, Esq., and George DeForest Lord, Esq., of counsel, proctors for libellant.

Ralph C. Green, Esq., United States attorney for the Eastern District of New York, by Charles E. Wythe, Esq., of counsel, proctor for the claimant.

Offers in evidence

Mr. BRADLEY. I offer in evidence the testimony of Thomas A. Leinster, chief engineer of the "Port Philip," given at the court of inquiry, and offer it pursuant to stipulation.

(Marked "Libellant's Exhibit 1 in evidence.")

Mr. BRADLEY. I offer the deposition of Louis Spaniol, a witness in behalf of the libelant.

(Marked "Libelant's Exhibit 2 in evidence.")

35 Mr. BRADLEY. And I offer in evidence the testimony of the lookout of the "Proteus," George Gormly, given at the naval court of inquiry.

(Marked "Libellant's Exhibit 3 in evidence.")

JOHN JACK, called as a witness on behalf of the libelant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. What is your occupation and residence?—A. Master mariner.

Q. Where do you live?—A. In London, England.

Q. By whom are you employed?—A. The Commonwealth & Dominion Line (Ltd.).

Q. What vessel of theirs did you last command?—A. The "Port Hunter."

Q. And you were detached from that command to come here for this trial?—A. Yes.

Q. How long have you been following the sea?—A. About 32 years.

Q. Do you hold a master's license?—A. A master's license.

Q. How long have you held it?—A. About 18 years.

The COURT. What license?

The WITNESS. Ordinary command, sail or steam.

Q. On October 16, 1918, what vessel were you in command of?—A. The "Port Philip."

Q. By whom was it owned?—A. The Commonwealth & Dominion Line (Ltd.).

Q. The libellant in this case?—A. Yes, sir.

Q. Will you give the dimensions of the "Port Philip"?—A. She was 390 feet over all, about 49 feet beam, 2,586 net register, and 4,060 gross.

36 Q. Single screw?—A. Yes, sir.

Q. What was her speed, loaded, full?—A. Full s peed loaded, 10½ knots.

Q. One-half speed, what did she make?—A. 5 to 6 knots.

Q. And slow?—A. 2 to 3 knots.

Q. How many officers did you have at that time?—A. Four on deck and four engineer officers.

Q. Four deck officers, chief, first, second, and third?—A. Yes.

Q. And the engineers, chief, first, second, and third?—A. Yes, sir.

Q. How much crew?—A. About 54 all told; 45 crew in addition to the officers.

Q. Did you have anybody on board not on the ship's articles?—A. Only one.

Q. Who was he?—A. A United States naval signal man.

Q. On that date where was the "Port Philip"?—A. She was anchored off Norton's Point.

Q. Was she loaded?—A. She was deeply loaded.

Q. Where had you taken cargo on board?—A. In Boston.

Q. When did you leave Boston?—A. The 11th of October.

Q. When did you arrive in New York?—A. The evening of the 12th of October.

Q. Did you take up an anchorage here?—A. Took up an anchorage in Gravesend Bay.

Q. What did you come to New York for?—A. Convoy purposes.

Q. Where were you bound for?—A. The convoy was assembling here, and we were sailing that morning.

Q. You mean the morning of the 16th?—A. Yes, sir.

37 Q. Can you remember the anchor bearings where you took up your anchorage in New York?—A. Yes, sir.

Q. If you can not remember, you can——A. I think Norton's Point bore north 73½ east; Fort Wadsworth bore north 31½ west, and West Bank was south 18½ west.

Q. Were those true bearings?—A. Those were true bearings, corrected for 9½ degrees westerly error on the compass.

Q. Do you remember your draft?—A. No, I can not recall the draft now; fairly deep, 26 to 27 foot, but I am not sure of that.

Q. Were any log books saved from the collision?—A. No.

Q. They all went down?—A. All went down with the ship.

Q. At about ten o'clock that morning how was the tide?—A. Running fairly strong ebb that morning.

Q. How was the visibility?—A. The visibility was good.

Q. On that morning were your convoy signals flying?—A. Yes, sir.

Q. I show you a photograph and ask you if that indicates on the foremast convoy signals of the "Port Phillip"?—A. Yes, there is a convoy signal.

Mr. BRADLEY. I ask that be marked in evidence.

(Marked "Libellant's Exhibit 4 in evidence.")

Mr. BRADLEY. This is an enlargement of a photograph that was not put in evidence at the naval trial, but all the others that I refer to were put in evidence, and I have the films. They were snapshots, and in order to bring out details I had enlargements made.

38 Q. Did you get under way on the morning of the 16th of October?—A. Yes, sir; we got under way that morning.

Q. What time?—A. A quarter to ten.

Q. Where were you bound?—A. Bound outside to join our convoy. Our destination was St. Nazaire, France.

Q. Where was the convoy to be made up, outside of Ambrose?—A. Outside of Sandy Hook.

Q. Will you describe the course of your vessel and the signals she gave and the speed she made from the time you got under way until the collision, in your own language?—A. After we hove up the anchor that morning we proceeded up the harbor at a slow speed, and there was one or two ships anchored to the northward. We had to go a little to starboard to clear them. When we got far enough north, where we could see an opening between the two vessels, to come into Ambrose we put our helm hard over to come into Ambrose, and at the same time we swung on the starboard helm we blew one long blast, and as we were coming out this signal was renewed three or four times, the one signal blast. We could see the "Proteus" coming up.

The COURT. At what intervals?

The WITNESS. One minute intervals anyhow.

A. (Continued.) Then as we were coming out, of course, the speed had been increased then. She was going full speed. When we swung our helm to come between the two vessels we came full speed. The ship was averaging between 5 and 6 knots. As we came

39 out we blew those signals expecting to get an answer from the "Proteus." After the fourth signal we heard and saw the signal from the "Proteus," which was two blasts. The pilot said, "What is that?" I said, "It sounds like two blasts." He immediately blew one blast and the alarm signal and we rang on full speed ahead, with a double ring for extra full speed ahead. I am not quite certain what my testimony was at the other court after that.

Q. You do not need to remember your testimony.

The COURT. Tell what happened.

Q. It is long enough away so you will not remember, but do the best you can.—A. The "Proteus" blew the two blasts. We steadied our helm.

The COURT. How far was she away from you?

The WITNESS. When she blew the two blasts she was probably 1,500 to 1,600 feet away, and when she gave the two blasts she altered her course to port to cross ahead of us. We could see her bow swinging to port, then it seemed to steady and came back again, and as soon as we saw her coming back we put our helm hard to starboard to pass port to port, but evidently the ships were too close, and the "Proteus" ran into us on our quarter, about No. 5 hatch, and cut a large hole there, and as soon as he backed out the "Port Philip" started to sink very rapidly.

Q. I show you a photographic enlargement of Exhibit 2 on
40 the Wallace deposition, being Exhibit 10 at the naval trial, and ask you if that represents the position of the two vessels shortly after the collision while the bow of the "Proteus" was still inside the "Port Philip"?

Mr. BRADLEY. I might state for the record, the photograph was taken from the "Proteus."

A. Yes, that represents the position when the "Proteus" still had her stem in the hole she made in our after quarter.

Mr. BRADLEY. I ask that be marked in evidence.

(Marked "Libelant's Exhibit 5 in evidence.")

Q. I show you another photograph which is an enlargement of Exhibit 11 at the naval trial. Can you tell me when that photograph was taken—a little later than the last one, wasn't it?—A. Judging by the look of the ship, she settled well aft there. I should say it is just when the "Proteus" was coming astern and our boat had been lowered into the water.

Mr. BRADLEY. I offer that in evidence.

(Marked "Libelant's Exhibit 6 in evidence.")

Q. I show you another photograph which is an enlargement of Exhibit 13 at the naval trial, and Exhibit 3 on Wallace's deposition, and ask you if that represents the hole made in the side of the "Port Philip" by the "Proteus"?—A. Yes; that looks like the damage done by the "Proteus."

Q. That was taken shortly after the "Proteus" was backing out?—A. Backed clear.

41 Mr. BRADLEY. I ask that be marked in evidence.

(Marked "Libelant's Exhibit 7 in evidence.")

Q. I show you another photograph, being an enlargement of Exhibit 12 at the naval trial, and Exhibit 4 in Wallace's deposition, and ask you if that shows the "Port Philip" shortly after the "Proteus" had backed out?—A. Yes; that is shortly after the "Proteus" backed out with our stern awash, pretty well under water.

Mr. BRADLEY. I offer that in evidence.

(Marked "Libelant's Exhibit 8 in evidence.")

Q. I show you another photograph, being an enlargement of naval Exhibit 14, Exhibit 5 for identification on the deposition of Mr. Wallace, and ask you if that shows the "Port Philip" after the

"Proteus" had proceeded on?—A. Yes; that is after the "Proteus" had proceeded on her voyage up the river.

Mr. BRADLEY. I offer that in evidence.

(Marked "Libelant's Exhibit 9 in evidence.")

Q. Prior to the collision could you see any diminution in the "Proteus'" speed?—A. No; I did not notice any diminution at all. She seemed to be hooked up full speed.

Q. Did you notice the bow wave?—A. Yes; she had a bow wave. She had a bone in her teeth, as we say.

Q. What was the effect of the collision on the two vessels in respect to their headings?—A. As soon as the "Proteus" ran into us
42 we were probably heading across in a westerly direction and it swung us in a southerly direction.

Q. Did the "Proteus" keep her nose in the hole a long time?—A. Not long; probably a minute or two.

Q. During that time did the collision have an effect on the heading of the "Proteus"?—A. She swung with us.

Q. Both vessels swung their bows to port and sterns to starboard?—A. Yes, sir.

By the COURT:

Q. Were you a double screw?—A. No; single screw.

Q. When you went astern how did it throw your bow, when you put full speed astern?—A. We did not go astern.

Q. You did not reverse at all?—A. No.

By Mr. BRADLEY:

Q. When you got under way from your anchorage at what speed were the engines put?—A. When we started away from the anchorage we went one-half speed for a start.

Q. Was any change made after that?—A. Went one-half speed, then slow.

Q. And then what?—A. Full, when we came into the channel.

Q. Then was there any further change made?—A. Not after that.

Q. I thought you gave extra full?—A. Full ahead until we gave extra full.

Q. At any time were your engines reversed from the time you got under way until the collision?—A. No, sir.

43 Q. Did you ever blow a signal of three blasts?—A. No, we never blew three blasts. One blast and the alarm is the only signals we used.

Q. You testified at the naval trial, did you not?—A. I think one day.

Q. Do you remember marking the course of the "Port Philip" on Chart 369 of New York Harbor?—A. Yes, I remember that.

Q. I show you that chart. This is Exhibit 1 of the naval trial, and I ask you if the cross appearing there indicates the point where the "Port Philip" was anchored?—A. That is right.

Q. Is the course of the "Port Philip" laid out on that chart?—A. Approximately.

Q. And you did that yourself at the trial?—A. Yes.

Q. I notice on one point on the chart is the letter A. What does that indicate?—A. Started to swing on the starboard helm.

Q. And B?—A. That is where the collision occurred.

Q. I notice another place with a W, with a circle around and a dot.—A. That indicates where the "Port Philip" sank.

Mr. BRADLEY. That was put on by Captain Hansen at the naval trial. I offer this chart in evidence.

(Marked "Libellant's Exhibit 10 in evidence.")

Q. Now, Captain, at the time of the collision how far away were you from the nearest vessel anchored to the eastward, about?—A. We were well in the middle of the channel at the time of the collision. I should say at least 1,800 feet.

44 Q. After the collision did you see the chief engineer at all?—A. Yes; after the collision I sent for the chief, and I ran down and had a few words with him, and told him I wanted him to do the best he could to beach the ship.

Q. Did he go below?—A. Yes; he went below.

Q. Have you any idea when that was?—A. I have no recollection of the time.

Q. Shortly after the collision?—A. Yes; sir.

Q. Thereafter did the engines go ahead?—A. He went below and put the engines full speed ahead.

Q. Did you stop the engines any time before you sank?—A. There was a tug with an oil barge cut across our bow. We had to stop for that. The water was on the decks, and I told the chief engineer to come from below, as I was afraid he would get caught. He came up and reached the deck in time, as the water was starting to flow in the engine room, over the platform.

Q. I show you Libellant's Exhibit 9, and ask you if the two vessels seen ahead of the "Port Philip" are the oil tow you refer to?—A. Yes; I think that is the oil tow here. It looks like it. The tug here and the oil tow here [indicating].

Q. At the time of the collision did the "Port Philip" start to sink rapidly?—A. Right away.

Q. How soon did her stern get awash?—A. As soon as the "Proteus" backed she seemed to go down like a plummet.

Q. How soon after you were struck did the "Port Philip" sink?—A. Somewhere around three or four minutes; it seemed to me like three or four minutes. It might have been longer, but it only looked like that to me.

Q. Do you know whether the impact of the collision and
45 the cut the "Proteus" made in your vessel affected your steering gear in any way?—A. It is possible it did.

Q. You do not know?—A. I could not say for certain.

Q. What was it, a steam steering gear?—A. Yes, sir; the rod and chain leading along the deck outside the hatch coaming around the quarter and aft.

Q. I show you Exhibit 7 and ask you if the steering rods are not between the hatch coamings and the wreckage as a result of the collision?—A. The steering gear runs alongside the coaming here and it is possible it could be carried away, although I have no knowledge of that fact.

Q. Did the "Port Philip," during the five minutes your engines were ahead after the collision make any headway through the water as the result of her own engines and movement, and if so, how much?—A. Myself I do not think she made headway through her engines. I think she was too severely wounded to do anything, although we tried. It would be only a few hundred yards, if any. Myself I think she made no headway.

Q. Was there any boiler explosion on board your vessel after the collision?—A. No. No boiler explosion.

Q. Were any lives lost?—A. No lives lost.

Q. You say that all the logs were lost, did you go back and try to get them?—A. Yes, after we boarded the ship I went to the forecastle head. I could not get along the deck. The water was along the fore deck. I tried the booms, and there was no chance. The tarpaulins were up like balloons, and I could see the air was pretty near exhausted and it was time to get off and I got off.

Q. I do not remember if I asked you how the wind was.—A. Probably WSW that morning.

Q. Any amount?—A. A light breeze.

46 Q. After the "Port Philip" sank how much of her was visible?—A. After she sank, the top of her funnel, two masts, and some of the upper bridge structure were awash.

Mr. BRADLEY. Your witness.

Cross-examination by Mr. WYTHE:

Q. You have testified as to these photographs, but you never saw the "Port Philip" from that direction, did you? These were all taken from some point off your ship?—A. That was taken off the "Proteus."

Q. You do not know what part of the "Proteus" any of them were taken from?—A. No, I do not know.

Q. You cannot say for sure that is what the "Port Philip" looked like, you did not see it?—A. I was not underneath her like that. I was on the bridge.

Q. You did not see her in that position?—A. See my ship?

Q. See your ship. That is taken from away astern of your ship, isn't it?—A. That is taken from the "Proteus."

Q. You did not see her look like that?—A. I might have been in that boat; I cannot say.

Q. None of these pictures were taken from any view you had?—A. No, they were taken from the "Proteus."

Q. Are you sure after the collision and after the "Proteus" backed out of the hole, and after you put your engines ahead, you made very little headway through the water?—A. I do not think she could make much, myself.

Q. I think you said you made practically no headway at all.
47 Are you sure of that?—A. I could not be certain. That is my own opinion, that she made very little headway.

Q. Didn't you testify you had to stop your engines to avoid hitting an oil tow?—A. Yes, sir.

Q. If you were making no headway you would not have to stop?—A. We were drifting down with the tide.

Q. Your engines had some effect?—A. Very little. Look at the position of the ship.

Q. What is your best estimate of the distance you made with your engines after the collision?—A. What distance we made with the engines?

Q. After the collision?—A. I could not say.

Q. You have no idea at all?—A. No; I have not any idea what distance she made. I should say none, myself.

Q. About how much freeboard did the "Port Philip" have at the time of the collision? Was she deeply loaded?—A. Deeply laden, right down; I can not remember her freeboard.

Q. Not exactly, but about; you know about it?—A. Where? Amidship?

Q. Yes.—A. Somewhere around 4 feet.

Q. She was very deep?—A. She was deep; right down to her mark.

Q. You have just given us the anchor bearings of the "Port Philip" before you got underway, and I noticed you gave those from memory, and did not consult a paper.—A. Yes, sir.

Q. Where did you get that from? You have not carried it in your head seven years?—A. We got it from our own testimony.

Q. Your testimony before the naval board?—A. Yes, sir.

Q. Did you take the anchor bearings yourself?—A. I did, and I used to often go up there and test them.

48 Q. When did you take them before the collision?—A. Every watch.

Q. They were the same every watch?—A. There might be a degree or two difference. It depends how the ship was heading, how she swings, you know.

Q. One of your bearings you gave at Norton's Point; that was on your starboard side?—A. Norton's Point, did you say?

Q. Yes?—A. Yes, sir.

Q. That bearing would change considerably, depending whether the tide was flood or ebb?—A. According to the distance off. If a short distance off, an object, naturally it changes if the vessel swings.

Q. Was this bearing a flood or ebb bearing?—A. Taken before we got underway. The bearings are checked every watch.

Q. I suppose the bearings were entered in the logbook?—A. Yes; every watch.

Q. That logbook was not saved?—A. We saved nothing.

Q. Then the bearings were testified to in the naval board by memory only?—A. Memory only.

Q. They may not be exactly correct?—A. They are correct.

Q. You are swearing to it now?—A. Yes; I swear to that.

Q. Your connection with the anchor bearings was only for the purpose of checking up, is that right?—A. How do you mean?

Q. The bearings were taken by one of your officers in the regular course of duties?—A. Yes, sir.

Q. Did you always check on them?—A. Once a day, generally every evening. I used to check them up, and as long as the weather is fine I did not in the day.

49 Q. Did you check them on the morning of the collision?—A. Not that morning.

Q. You do not know of your memory what they were the morning of the collision?—A. Not the morning of the collision. The officers had taken them. I did not check them that morning, but I checked them the previous evening.

Q. You have no personal knowledge what they were that morning?—A. No.

Q. But still you are willing to swear what they were?—A. I am willing to swear they were correct.

Q. After you got your anchor away you testified you went first half speed and then reduced it to slow?—A. Yes, sir.

Q. As you got under way, or even before you got under way, when getting your anchor up, how far was the "Port Philip" from the most westerly of the anchored vessels there?—A. I can not remember now.

Q. Was she a mile away?—A. No; she would hardly be a mile.

Q. Was she a half mile away?—A. I could not be certain.

Q. You could not be certain?—A. I could not be certain what the distance was.

Q. I want your best estimate. We are trying to get the facts of the case, and you were there.—A. Quite right.

Q. Give an estimate how far from the most westerly vessel the "Port Philip" was.—A. Probably two ships away. I could not be certain on that subject. I would like to be correct, but I can not.

Q. About two ship lengths to the eastward?—A. About two ship lengths. She would be at a safe distance to allow for both ships to swing clear of each other.

50 Q. That would be then in the neighborhood of 800 feet, if it was two lengths?—A. I do not remember that.

Q. I say, if it was two lengths it would be 800 feet?—A. Yes, it would.

Q. Your vessel was 390 feet long?—A. Say, 400 feet.

Q. You also testified you ported your helm after you got under way to clear vessels ahead of you?—A. Yes, a slight port helm.

Q. How much did you change that?—A. Very slight; one-half point to clear the ships.

Q. No more than a point?—A. It would not be more than a point.

Q. How many ships did you clear as you went out?—A. There was probably three to the north of us, one to clear, and then come between two.

Q. You passed more than one on your port side before you starboarded?—A. Yes; probably two ships as we came between the two most northwesterly.

Q. Then you swung hard astarboard to go in the channel?—A. Yes, sir.

Q. At the time you swung westerly was there more than one ship between you and the channel?—A. One north and one south. We were coming between.

Q. Just one before?—A. Yes, sir.

Q. So you did not cross the stern of more than one vessel after you started?—A. Yes, sir.

Q. When did you ring up full speed ahead, before you starboarded?—A. As we came on the starboard helm to come between the two ships we rang full speed.

Q. When was it with reference to starboarding your helm that you blew the first long blast?—A. As we starboarded our helm coming around on the swing of the helm we blew these blasts.

51 Q. Coming westerly?—A. On the westerly course then.

Q. Then going full speed?—A. Then going full speed.

Q. You were not getting full speed out of her then?—A. No.

Q. But your engines were turning full speed?—A. Yes; she was only gaining speed then.

Q. From then on she continued gaining speed?—A. Continued gaining speed until the collision.

Q. Her full speed was 10½ knots?—A. Yes, sir.

Q. With that load she would make 10½ knots?—A. She would make 10½ knots with that load after she was going full speed some time.

Q. How long had you had the "Port Philip"?—A. From April that year. I was relieving a couple of voyages.

Q. That would be six months?—A. Six months.

Q. After you got straightened out, when you made the turn to the westward, what speed were you making through the water, 5 knots?—A. I reckon 5 to 6 knots then.

Q. That is when you first blew one long blast?—A. When we came around on our starboard helm, between the two ships, that is when we blew the first long blast.

By the COURT:

Q. You made the swing before you blew?—A. As we were coming on the swing.

Q. While you were swinging?—A. While we were on the swing.

By Mr. WYTHE:

52 Q. How far to the eastward of the two anchored vessels did you make the swing?—A. Just to give ourselves room to come around nicely.

Q. How long did it take the "Port Philip" to come around nicely?—A. I should say when she straightened up she was not any more than on a line between the two vessels.

Q. I do not mean when she straightened. I mean when you started your swing how far to the eastward was she?—A. I could not measure the distance, you know.

Q. You have an idea what the turning radius of your vessel is?—A. She was on the hard over helm then coming around pretty quick. She was not probably any more than a ship's length when she got squared up.

Q. When you were heading to the northward and you went hard astarboard at that time, when you put your helm hard astarboard, how far to the eastward was your ship from these two vessels?—A. I see. 400 feet, a ship's length away.

By the COURT:

Q. You could make your swing——A. So as to make my swing and clear.

Q. (Continued.) In the length of your ship?—A. Yes.

By Mr. WYTHE:

Q. You think you could make that swing in your own length?—A. Sure.

Q. And the first long blast was blown when you were on the swing?—A. When coming around.

Q. Before you came out?—A. Before we came out.

53 Q. When did you first see the "Proteus" coming up?—A. When did we first see her?

Q. Yes.—A. As we were coming out we saw the "Proteus" coming up the channel.

Q. As you were coming out between the two vessels?—A. No; we saw her before that.

Q. I asked where you first saw her.—A. She was coming up.

By the COURT:

Q. Where was your vessel when you first saw the "Proteus"?—A. We were coming down where we swung the helm.

Q. Before you made the swing on the starboard helm?—A. Yes, sir.

Q. How long before you started to make the swing?—A. Just after we got under way we saw her.

Q. Just after you got under way you saw her?—A. Yes.

By Mr. WYTHE:

Q. Haven't you testified that you were heading out across the entrance of the channel and that you saw the "Proteus" and called the pilot's attention to it?—A. I did.

Q. You had seen her before that?—A. Yes, sir.

Q. Were you watching her all the time?—A. Yes; pretty well all the time.

Q. Why was it necessary then to call the pilot's attention to it?—A. It is the master's duty to make sure the pilots observe these things, to make sure he observed any ship coming up or down the channel. I always do that.

54 Q. You did not know whether he had seen her or not?—A. I did not know.

Q. I am going to read you a little bit from your testimony before the naval board, page 6 of the record: "When we were coming out under a starboard helm heading out across the entrance of the channel the steamer "Proteus" was coming up Ambrose Channel on the starboard side at the time. I drew the pilot's attention to this and he said he had already seen her, as he was coming out. He blew one long blast." Is that correct?—A. That he had already seen her?

Q. "I drew the pilot's attention to this and he said he had already seen her as he was coming out. He blew one long blast."—A. Yes; he ordered one long blast to be blown.

Q. That is the first long blast?—A. Yes, sir.

Q. You were then heading out across the entrance of the channel?—A. Yes, sir.

Q. And you saw the "Proteus" on the starboard side of the channel coming up?—A. He was on the starboard side of the channel.

Q. You say she was coming fast. Can you estimate what speed she was coming?—A. Full speed, judging by the size of the wave at her bow. I had no idea what the speed of the ship was.

Q. How far away was she from you then?—A. When we blew one blast?

Q. Yes.—A. She was probably a mile away then.

Q. Then that was before you came out into the channel?—A. Coming out; yes sir.

Mr. BRADLEY. What channel are you referring to?

Mr. WYTHE. We will get that straightened out.

55 Q. You talked about going out into the channel. What did you mean, in the channel?—A. The continuation of Ambrose Channel, the continuation from the buoys up.

Q. That is what you meant when you said the channel?—A. Yes, sir.

Q. And it was that channel that you said you saw the "Proteus" coming up?—A. Coming up.

Q. About how long before the collision was it that you blew the first long blast, about how many minutes?—A. When we blew the first long blast?

Q. Yes.—A. I can not remember now. It is a long time ago to remember the time.

Q. You have remembered some other things?—A. Yes; I probably gave my testimony at that time, didn't I?

Q. Well, you are giving testimony now.—A. I can not remember it now.

Q. You do not remember how long it was?—A. No, I can not remember the time.

Q. The "Proteus" was about a mile away when you blew that first long blast?—A. Yes, sir.

Q. But you can not remember how long that was before the collision?—A. No; I can not remember what my testimony was at that time.

Q. I am asking you what the facts were. We know what your testimony was.—A. All right.

Q. You do not remember?—A. No; I can not remember.

Q. Now, from your testimony before the naval board, on page 11, question No. 41: "Q. Now from the time you took the westerly course headed over toward Hoffman Island how soon after did the 'Proteus' collide with your vessel?—A. She was very close then; it was only a matter of two or three minutes then." Is that cor-
56 rect?—A. Yes; I take it that is correct, if that is my testimony before.

Q. Now I will read you again, Captain, from page 20, question 104: "Q. How long a time do you think elapsed between the time you blew the first whistle and the collision?—A. I should say ten minutes." Is that correct?—A. Yes; that is correct, if that is my testimony.

Q. In one answer you say two or three minutes and the other answer you said ten minutes at that time. You were not sure then, were you?—A. Not very, by the look of it.

The COURT. Did he say two or three minutes? I did not hear that. I thought he said two or three minutes from the time she came into collision until she sank, and he was not certain.

Mr. WYTHE. What I read to him before was page 11: "Q. From the time you took the westerly course headed over toward Hoffman Island how soon after did the 'Proteus' collide with your vessel?—A. She was very close then; it was only a matter of two or three minutes then."

Q. Now you say after your first one-blast signal you testified this morning you blew three more, making four altogether?—A. Yes, sir.

Q. And they were about a minute apart, is that right?—A. About that.

Q. When the fourth blast was sounded from your ship, that was about the same time the "Proteus" answered you with two, wasn't it?—A. Yes; that is about the same time as the "Proteus" blew two signals.

57 Q. That is to say, your four one-blast signals were answered by two?—A. By two from the "Proteus."

Q. And there was no long interval between those?—A. Between which?

Q. Between the 4 one-blast signals and the "Proteus's" two blasts?—A. The "Proteus" answered almost on top.

By the COURT:

Q. You had the two blasts from the "Proteus" before you blew your second one?—A. My fourth one.

Q. Then you had blown 3 one-blasts before the "Proteus" answered?—A. Yes.

Q. Then you had an answer of two almost instantly?—A. Yes.

By Mr. WYTHE:

Q. Didn't you testify you blew four altogether before you got a reply?—A. Three or four I testified.

Q. At the time you got the two blasts from the "Proteus," just where was the "Port Philip"?—A. By that time she was well out clear of the other ships, heading across the channel toward Hoffman Island.

Q. How far clear of the other ships?—A. Probably 1,000 feet anyhow.

Q. It might be more than that?—A. It might be a little more.

Q. That is your best estimate, 1,000 feet?—A. No. I am giving you the least estimate. It might be a little more.

58 Q. 1,000 feet is the best you can estimate it now?—A. A thousand feet is the least I will estimate it.

Q. At that time you said the "Proteus" was 1,500 or 1,600 feet away from you?—A. About that.

Q. How did she bear from you?—A. Practically at right angles then.

Q. About how many points on your port was this?—A. What time is this, after she blew?

Q. After she blew the two-blast signal.—A. She was pretty well headed for our bridge then. Then she altered out and headed for No. 1 hatch; then she seemed to be heading for the forecastle head. Then she seemed to steady and come back again.

Q. When she sounded the two whistles she was at right angles heading for your bridge?—A. Somewhere about the bridge.

Q. Then you say it was after the two-blast signal of the "Proteus" that she altered her course, and not before that?—A. As she was blowing the two blasts she started to swing right away.

Q. Then she was swinging to her port, to the westward?—A. Yes, sir.

Q. How much did she swing?—A. She seemed to swing clear of our bridge, and seemed to go past our bow.

Q. How many points would that be?—A. I cannot say exactly, 3 points anyhow.

Q. How far is the bridge from the bow?—A. 150 feet; 160, perhaps.

Q. Then you say after her swing to port and to westward she changed again and went back?—A. Yes. I could see her steady and come back again.

Q. Swinging to her own starboard?—A. Yes; coming to her own starboard after that.

Q. How many points do you think she made on that star-
59 board swing?—A. She made a good few. I could not say. I was not watching the compass then.

Q. She struck your stern?—A. She swung around to our stern. We got it on the quarter.

Q. How was the angle when you came together?—A. I estimate the angle was around 75 degrees.

Q. The "Proteus" was heading aft, was she, when she struck you?—A. Heading toward the stern.

Q. That is, the blow was leading aft?—A. Yes, sir.

Q. When was it you rang the extra full speed ahead? Was that before or after the "Proteus" blew two?—A. Where did we ring the extra speed? I can not remember whether it was before or after.

Q. Did you hear the "Proteus" blow anything else but two blasts before the collision?—A. That is the only signal we heard from the "Proteus."

Q. All this time your ship was picking up speed through the water?—A. She was picking up speed.

Q. At the time of the collision how fast do you think she was going?—A. 6 knots.

Q. About 6 knots?—A. Yes.

Q. As far as you can tell us, describe where the collision actually happened; in the first place, tell us about how far from the nearest of the anchored vessels in the anchorage you had left?—A. Where the collision took place?

Q. Yes, where the two vessels came together.—A. Somewhere about the center of the channel, I should say, a little to the westward, if anything.

Q. Can you estimate the distance between your stern and the anchored vessels in the anchorage at the time the collision took place?—A. When the collision occurred?

Q. Yes.—A. Probably 1,800 or 1,900 feet then.

60 Q. At the time the "Port Philip" was struck she was heading about westerly?—A. When struck first she would be heading about west or WSW. To the southward of Hoffman Island then.

Q. She was still on her starboard helm?—A. Still on the starboard helm.

Q. And you were manoeuvring at that time to get on your course down the channel?—A. Wanted to get on our side of the channel, the starboard side of the channel, outward.

Q. You did not get on your course?—A. No.

Q. You intended to go down Ambrose Channel to the Ambrose Lightvessel to join the convoy?—A. Yes.

Q. Had any other vessel gone out before you or were you the first?—A. I think one went before us. Several others were heaving up or preparing to heave up. We were one of the first.

Q. I think you testified you did not hear the two blasts from the "Proteus," but you saw the steam?—A. I saw the steam.

Q. After you saw that did you see any more steam come from her whistle?—A. No; I saw no other steam, and heard no other whistle.

Q. Were you watching?—A. Listening and watching.

Q. You answered the first two with one?—A. His two came after our one.

Q. After his two didn't you give one?—A. Gave one and the alarm.

Q. You got no answer after that?—A. No.

Q. You never heard him blow one?—A. No.

Q. You never heard him blow three?—A. He never blew three.

61 Q. You did not see the steam either of one or three after the two?—A. No sign, except the two blasts.

Q. What did that two blasts mean to your mind when you saw it?—A. I did not quite know what it meant, but I understand it meant he was going to pass ahead of me, under the rules relating to inland navigation of the waters of the U. S. A.

Q. You understood he was going across your bow?—A. Yes, sir.

Q. He was then 1,500 feet away or 1,600?—A. About that.

Q. You never stopped your engines?—A. Never stopped; no. We were going extra full then to get all the speed we could.

Q. Was there any question, or did it appear to you that the pilot did not understand the two-blast signal of the "Proteus"?—A. He understood them all right. We were waiting for an answer to our signals. We could not understand why he did not answer us previous to this; our one-blast signal was slow and distinct.

Q. You knew what he wanted to do, he wanted to cross your bow when you heard the two blasts?—A. I did not know.

Q. What did two blasts mean?—A. Nothing to me. I knew it was a signal relating to navigation of the U. S. A.

Q. You did not know what it meant?—A. I did not know then.

Q. Did the pilot know?—A. Certainly; that is what he was there for.

Q. You said you understood by the two blasts he meant to cross your bow?—A. Yes.

Q. Is that what you understand now or understood that time?—A. I only understood that from the pilot. I do not know if it is right or wrong.

62 Q. You did not understand it then?—A. No; I had to ask information about that point.

Q. Did you ask information then when he blew it?—A. I inquired about it.

Q. Whom did you ask?—A. I can not remember now; probably some of the pilots.

Q. I am talking at the time.

By the COURT:

Q. At the time the signal was blown did you ask anybody?—A. Not then.

By Mr. WYTHE:

Q. Didn't you know what it meant then?—A. Not then.

Q. You did not ask the pilot?—A. Not then.

Q. Didn't you think it was necessary to find out?—A. No; the pilot is there for his local knowledge. He knows all the signals in the harbor.

Q. You know now that the two-blast whistle meant he was going across your bow?—A. I understand so now.

Q. And you saw her swing to the left at that time, didn't you?—A. Yes.

Q. You know now that the two blasts meant he was going across your bow; you found that out since?—A. I understand so.

Q. But you did see him swing to the left after she blew two?—A. She swung to the westward.

Q. Now, at that time don't you think it would be a proper thing for the "Port Philip" to stop and reverse her engines?—A. No; it would be an absolutely wrong thing to do, especially after the other ship crossing our signals.

63 Q. Instead of stopping and reversing, you continued ahead full speed?—A. When we saw she was coming to our stern it was the only thing to do. If he was going across our bow then we would go reverse to give him all the assistance we could.

Q. That is what the two blasts meant?—A. Yes.

Q. You did not give him all the assistance you could?—A. We did. We had the right of way and he crossed our signals with a two-blast signal.

Q. After that you continued full speed ahead?—A. Yes, sir.

Q. You answered his two with one and blew an alarm?—A. I beg your pardon?

Q. You answered his two with one?—A. No; he answered our one with two.

Q. After he blew his two didn't you blow him more?—A. I blew him another one and an alarm signal.

Q. That is just what I asked you.—A. Yes.

Q. What did the one mean and the alarm?—A. You had better ask the pilot that now. That is his signal.

Q. You said you blew it. Did you blow the one?—A. The pilot blew one, followed by an alarm.

Q. You do not know what it meant?—A. No, I cannot say I know what it means.

Q. Did you ever use passing signals when you have not a pilot aboard?—A. We do at sea.

Q. Do you know what they mean?—A. I do.

Q. Do you ever use passing signals in inland waters without a pilot?—A. No, sir; we never come inside the line.

Q. How long have you been going to sea?—A. About 32 years.

Q. How long have you been a master?—A. About 20 years, I should say.

64 Q. Deep sea all the time?—A. Deep sea practically all the time.

Q. You say practically all the time. Do you mean all the time or not?—A. Sometimes we would be ashore.

Q. I mean if you were going on deep sea vessels all that time?—A. All that time on deep sea vessels.

Q. Before that you were mate?—A. Mate; second, third and fourth mate.

Q. Always on deep sea vessels?—A. Yes.

Q. And in all that time you never learned what the inland rules meant?—A. Not inland waters, no. They do not apply to us.

Q. You never found out until this collision?—A. No.

Q. But you know it now?—A. I know something about them now. Not much.

Q. At the time you came out of that anchorage what did you understand the meaning to be of your one-blast whistle you blew, the first one?—A. The pilot, I explained to you before, blew that.

Q. Have you any knowledge why he blew it?—A. Giving the signal to the "Proteus" he was going out and was going to take his proper side of the channel.

Q. You think that was a signal to the "Proteus"?—A. It was, and any other vessel coming up or down.

Q. Any other ship?—A. I take it so.

Q. The second or third one-blast signals after, were they blown generally to all ships or the "Proteus"?—A. To any ships around under way, and to the "Proteus."

Q. And not to the "Proteus" alone?—A. (No answer.)

Q. When you blew your first, second, and third long blast
65 signals at intervals of about a minute, you never got an answer from the "Proteus"?—A. No.

Q. Did it occur to you then the "Proteus" had not heard it?—A. No; it occurred to us he did not understand them. He must have heard them. We were so close to each other.

Q. At any rate, he ignored them?—A. He ignored them anyhow.

Q. All that time you were proceeding out of the anchorage at full speed?—A. Yes.

Q. From what you saw did you think it was necessary that he should understand your signal?—A. Why, certainly.

Q. What were you expecting him to do?—A. Expecting to get a one-blast signal and proceed across to our own side of the channel and he would stick to his side of the channel and there would be no danger.

Q. You thought it necessary to get a one-blast signal in answer to your one?—A. Yes, sir.

Q. I thought you testified you were anxious to see her answer after your first long blast?—A. Certainly.

Q. But you did not stop and reverse?—A. We never reversed.

Q. Now you say that after the collision it seemed to you that the "Port Philip" sank in three or four minutes. That is what it seemed to you?—A. Yes, sir.

Q. You are not a very good judge of time?—A. Not that time; I had too much on my mind.

Q. There were a great many things happened before she went to the bottom?—A. Quite a lot of things happened in those few minutes.

Q. You remember the Coast Guard cutter "Hudson" coming alongside?—A. I remember.

66 Q. She took some of your men off?—A. Most of us got on board the "Hudson."

Q. About how long before you sank was it she got alongside?—A. She never was alongside.

Q. That she was standing by you; how long was that before the sinking?—A. I have no idea what the time was.

Q. A matter of a very few minutes?—A. As I say, it seemed to me only a matter of a few minutes then. Probably it was a little longer.

Redirect examination by Mr. BRADLEY:

Q. When you spoke of your freeboard, did you mean the main deck?—A. From the main deck.

Q. From the main deck how high was the shelter deck?—A. She was probably 6 feet.

Q. These times Mr. Wythe has been talking about, when you testified to them before, were merely estimates on your part?—A. Estimates, or as near as I could guess at the time.

Q. Where do the Commonwealth & Dominion boats that you serve on trade to from England?—A. To Australia.

Q. That is the route you have been on most?—A. Mostly.

Q. You are not familiar with the inland rules of the United States?—A. No.

Q. You know more about them now?—A. Yes.

Q. You were thoroughly familiar with the international rules, were you not?—A. Yes.

Q. You know what one and two blasts mean under them, do you not?—A. Yes; I know what they are. But once you come inside the line they do not apply.

67 By the COURT:

Q. You had a pilot aboard?—A. Yes; a Sandy Hook pilot.

By Mr. BRADLEY:

Q. I think I forgot to ask you where everybody was stationed. You were on the bridge?—A. Yes.

Q. Who else was on the bridge?—A. The pilot, the third officer Anderson, and the quartermaster at the wheel.

Q. What was the third officer doing?—A. Looking after the telegraph, whistle signals, and taking note of times.

By the COURT:

Q. The third officer made the signals?—A. Looks after the signals and telegraph, and takes note of the times.

Q. On whose order?—A. The pilot's orders.

By Mr. BRADLEY:

Q. Where was the chief officer?—A. On the forecastle head.

Q. Anybody with him?—A. The carpenter and the boatswain.

Q. Where was the third officer?—A. On the bridge.

Q. Where was the fourth?—A. No fourth.

Q. Where was the second?—A. Aft, on the after deck.

Q. What was he doing?—A. Standing by, looking at the steering gear, and seeing everything was running well aft.

68 GEORGE S. HALL, called as a witness on behalf of the libellant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. What is your occupation?—A. Chief officer.

Q. Where do you live?—A. London.

Q. How long have you followed the sea?—A. 27 years.

Q. In what capacity have you served on vessels at sea?—A. Fourth, third, second, and chief.

Q. Fourth, third, second, and chief officer?—A. Yes, sir.

Q. Have you sailed on sail and steam vessels, both?—A. Sail and steam.

Q. By whom are you now employed?—A. The Commonwealth & Dominion.

Q. The libellant in this case?—A. Yes.

Q. On October 16, 1918, what vessel were you sailing on?—A. The "Port Philip."

Q. Where was she that day?—A. New York Harbor.

Q. Did you have anything to do with taking anchor bearings of where she was lying?—A. Yes; when I was on watch I took the bearings each watch.

By the COURT:

Q. What were you, chief?—A. Chief officer.

By Mr. BRADLEY:

Q. Can you remember those bearings now, or would you like to refresh your recollection?—A. I would sooner refresh my recollection.

69 Q. I show you Libelant's Exhibit 10, which shows the anchor bearings of the "Port Philip," and ask you if that statement as to them is signed by yourself?—A. Yes; that is signed by me.

Q. Is that your signature?—A. My signature.

Q. That was prepared prior to the naval court inquiry, wasn't it?—A. Yes, sir.

Q. You testified at that inquiry?—A. Yes.

Q. Refreshing your recollection by this Exhibit 10, will you tell me what the anchor bearings were?—A. Norton's Point north 73½ east; Fort Wadsworth north 31½ west; West Bank Lighthouse south 18½ west. These were true bearings taken with the ship heading north.

Q. When were those bearings taken? With the ship heading north on an ebb tide?—A. On an ebb tide; yes.

Q. On the morning of October 16th you were stationed where on the "Port Philip"?—A. On the forecastle head.

Q. What were your duties there?—A. To heave up the anchor, stand by the anchor, and keep a lookout.

Q. Anybody with you?—A. The carpenter and boatswain.

Q. Who was the carpenter?—A. Blumquist.

Q. Is he in court?—A. Yes; he is sitting in court.

Q. What time that morning did you stand by to heave up the anchor?—A. I received orders to heave up about 9.48, if I remember rightly.

Q. Did you execute those orders?—A. Yes, sir.

Q. What time did you get under way?—A. About three minutes to ten.

70 Q. At what speed did you proceed?—A. I could not say what speed we were proceeding by the telegraph.

Q. You were not on the bridge?—A. I was not on the bridge.

Q. Did it appear full speed or slow?—A. The ship was only making slowly through the water.

Q. How was the tide?—A. Strong ebb.

Q. Did you proceed ahead any distance?—A. We steamed up the harbor.

Q. What was the purpose of that?—A. To clear some vessels at anchor on our port bow.

Q. Having cleared them, what did you do?—A. Starboarded, and steamed into the channel.

Q. From the time you starboarded tell me what happened, the signals you heard your vessel give, and the signals you heard any other vessel give, and the course of your vessel up to the collision.—A. As we starboarded a long blast was blown from our ship and shortly after there were three or four more long blasts blown, at which time we arrived in the channel, passing the vessels at anchor. It was then I saw a steamer coming up. After the last of our long blasts she blew two blasts, her head swung to port, then she steadied her helm and her head swung to starboard, and shortly afterwards we collided.

Q. Will you tell me if any other blasts were blown by the "Port Philip" after the two blasts?—A. Yes, a long blast followed by a number of short blasts.

Q. Was that repeated or not?—A. That was repeated a second time.

Q. From your position on the forecastle head could you see the swing of the "Proteus" to port after she blew two blasts?—A. Yes; quite distinctly.

71 Q. Did you at the naval trial prepare, in collaboration with the third officer and the pilot, a rough drawing, not to scale, to indicate the course of your vessel, the vessels at anchor, and the position at the time of the collision?—A. Yes.

Q. I show you Exhibit 3 of the naval court of inquiry, and ask you if that is your signature on it?—A. Yes; that is my signature.

Mr. BRADLEY. I offer it in evidence.

(Marked "Libelant's Exhibit 11 in evidence.")

Q. Does that diagram, libelant's Exhibit 11, represent in a graphic way what your testimony would be as to the course of your vessel, the relative positions of the other vessels, and the place of collision?—A. Yes.

Q. At the time of collision how far was your vessel from the nearest vessel anchored to the eastward, to the best estimate you can give?—A. How far were we eastward of the vessels at anchor?

Q. How far was your vessel to the nearest vessel anchored to the eastward?—A. When anchored?

Q. At the time of the collision?—A. As near as I remember, about 1,500 feet.

Q. Did you ever hear the "Port Philip" blow three blasts at this time?—A. No.

Q. How did the speed of the "Proteus" appear to you as she came up?—A. She appeared to be doing a good 10 knots over the ground.

Q. Did she have a bow wave?—A. Quite a bow wave.

Q. Did you see any evidence that she diminished her speed up to the collision?—A. No.

Q. Are you prepared to say she did not put her engines astern before the collision?—A. I would not say.

72 Q. If she did put them astern——A. It must have been just immediately before.

Q. I think you had charge of the stowage of the "Port Philip"?—A. Yes.

Q. That was stowed in Boston?—A. Yes.

Q. Confine yourself to No. 5 hatch. What was in No. 5 hatch?—A. Bar steel about one-third of the way up. On top of that parts of automobiles and barbed wire.

Q. Did that extend to the deck above?—A. Up to the 'tween decks.

Q. How far up did the bar steel run in reference to the shaft tunnel?—A. Up to the shaft tunnel. Level with it.

Q. Can you remember what that bar steel was, what it was?—A. As near as I remember the bars were 10 or 12 feet long, if I remember rightly, and about 6 inches thick.

Q. How were they stowed in reference to the fore and aft or crosswise position in the vessel?—A. Fore and aft.

Q. Right angles to the impact?—A. Yes.

Q. What was stowed in the deck above?—A. Bar steel, automobiles and barbed wire.

Q. What was stowed in the deck above?—A. Bar steel, automobiles, and cotton linters.

Q. There was a lower hold, 'tween deck, and shelter deck?—A. Yes.

Q. You described the stowage of each?—A. Yes.

Q. How was the stowage in No. 4?—A. Similar.

Q. Did you hear any signal from the "Proteus" except two blasts?—A. That is the only signal I heard.

Q. After the collision what did you do?—A. Went aft to see what damage had been done and ordered the crew to stand by the boats.

73 Q. Did you go as far aft as the point of the collision?—A. Yes; went to the bow of the "Proteus."

Q. Where was the "Proteus'" bow?—A. Right into us.

Q. I show you Exhibit 7 and ask you if that represents the hole made in the side of the "Port Philip" by the collision?—A. I cannot

swear it does represent it, as I did not see it from this angle. When I was aft the bow of the "Proteus" was about 12 feet into the ship.

Q. Did you see the point of collision after the "Proteus" backed out?—A. Not after she backed out.

Q. Before she backed out where did you go?—A. As soon as she started to back out I went to the boats, ordered the boats lowered, and the men to get into the boats.

Q. Was the "Port Philip" settling rapidly?—A. Yes.

Q. When you were aft where the "Proteus'" bow was, how deep was the "Port Philips'" stern in the water?—A. Almost awash.

Q. You ordered the boats lowered?—A. Yes.

Q. Was that order changed by the captain in any way?—A. After the boats were lowered the captain told me to hold off. I told the men to stand by with the boats.

Q. Do these photographs, Exhibits 5 and 6, represent one of the port boats as it was being lowered, and after it had been cast off the davits or the falls?—A. This shows the port boat being lowered, and this one is just as they cast off. They pulled away clear.

Q. After you had given these orders with respect to the boats did you go on the bridge?—A. Yes, sir; I went on the bridge.

74 Q. What time did you get there, if you recall?—A. If I remember rightly, twenty minutes past ten.

Q. Did you take the wheel?—A. I took the wheel. There was nobody at the wheel then.

Q. Were the engines subsequently stopped?—A. Afterwards. When I went on the bridge the telegraph was full speed ahead.

Q. Do you know whether the engines were working ahead?—A. To the best of my recollection they were.

Q. The telegraph stood there?—A. Yes.

Q. Were they ordered stopped?—A. At 10.23 the captain ordered them to be stopped and told the chief engineer to come up from below.

Q. Thereafter the ship was abandoned?—A. Yes.

Q. What effect do you think the engines of the "Port Philip" had on her after the collision?—A. I do not think they would have any effect.

Q. If they had any it was slight?—A. It was very, very slight, if any. The ship was too deep in the water then.

(Recess till 2 p. m.)

(Met pursuant to adjournment at 2 p. m.; present as before.)

GEORGE S. HALL resumed the stand.

Direct examination continued by Mr. BRADLEY:

Q. At the time of the collision did the impact of the collision have any effect on the heading of the two vessels?—A. Yes; both swung around.

75 Q. How did it affect them?—A. It swung the head of our vessel to the southward, and the head of the "Proteus" would be about northwest. It swung them around.

Q. So that after the collision how was the "Port Philip" headed?—A. Somewhere about south.

Q. What is the last vessel of the Commonwealth you served on?—A. The "Port Albany."

Q. You were detached from her to come here and testify at this trial?—A. Yes.

Cross-examination by Mr. WYTHE:

Q. I think you have testified, Mr. Hall, that the lapse of time between passing the westerly anchored vessel and the collision was eight or ten minutes.—A. From the time we altered our course, I think that was when we came under the starboard helm.

Q. That was when you blew your first one blast?—A. Yes.

Q. When you blew your second one blast would you be at that time to the westward of the anchored vessels, at the time of the second blast?—A. I do not think we would be quite.

Q. How did you come around on the starboard helm, slowly or quickly?—A. If I remember rightly, slowly.

Q. The tide would be on your starboard bow, wouldn't it?—A. Not until we came around on the starboard helm.

Q. It would not help you swing much?—A. Not until she got around.

Q. Do you think your speed as you passed between the anchored steamers was about 5 knots?—A. Yes; I should say about 5 knots.

Q. Now, this diagram that is in evidence, libelant's Exhibit
76 11, will you state when that was drawn?—A. That was drawn in Mr. Bradley's office a day or two after the collision.

Q. That was before you testified at the naval board?—A. Yes; before.

Q. I notice this is signed by yourself and Mr. J. Anderson, third officer, and Mr. Cannavalle, pilot?—A. Yes; they were there at the time.

Q. They all assisted in making the diagram?—A. Yes, sir.

Q. Now, if you will look at that diagram, please, and tell me whether the top of the page represents approximately——A. What do you mean, the top of the page?

Q. From the top to the bottom is from north to south, isn't that right?—A. Yes; approximately.

Q. Is that intended to be drawn to scale?—A. No. It is only a rough drawing.

Q. The distances were not measured when you prepared this?—A. No.

Q. Where did you get the names that are written on here alongside of the other anchored vessels?—A. I remembered the names of the vessels looking at them while we were anchored there.

Q. On this diagram the "Port Philip" is first represented at the bottom of the curved dotted line. Is that supposed to be her anchorage?—A. Yes.

Q. That is where she started from?—A. Yes.

Q. And at the time she raised anchor she was heading north to the ebb tide?—A. Yes.

Q. Now, you have mentioned the channel several times in your testimony. What do you understand the channel to be there; what would be the easterly boundary of that channel?—A. The easterly boundary I should say outside of where the vessels were anchored.

77 Q. You were figuring those vessels as on the edge of the channel?—A. On the edge of the channel; yes.

By the COURT:

Q. When you say where the vessels were anchored, do you mean the vessels to the west of you?—A. Yes.

By Mr. WYTHE:

Q. The most westerly of all?—A. Yes.

Q. On Exhibit 10, which I show you now, there is written on the face of the chart the anchor bearings of the "Port Philip" as taken by chief officer Hall and others. In whose handwriting is that, do you know?—A. This is my handwriting and my signature.

Q. Is that all your handwriting above your signature?—No, that is not my handwriting.

Q. Do you know who wrote that on there?—A. No; I do not. I do not recall who wrote it.

Q. Do you know when that was written on there?—It was prior to the naval court-martial.

Q. At the same time as the diagram shown you?—A. I do not know if it was the same day.

Q. But both were made before the naval investigation?—A. Yes, sir.

Q. The anchor bearings were taken by you, is that correct?—Yes; when I was on watch I took them.

Q. Did you make any memorandum of them?—A. I did in a book, but the book was lost with the ship.

Q. How long after the ship was lost was this written on the chart, Exhibit 10?—A. Only a day or two after.

78 Q. Could you remember those accurately during that time?—A. Yes; I had taken them so often.

Q. Were they always the same every time you took them?—A. When she was heading north.

Q. She did not always head north?—A. Oh, no.

Q. Are you prepared to say now there can be no mistake as to these anchor bearings?—A. Quite prepared.

Q. Sure of that?—A. Yes.

Q. There was quite a lot of excitement between the time you took the bearings and the time you wrote them down?—A. Yes, but there was lots of time to settle down afterwards.

Q. Those stuck in your head?—A. Yes.

Q. Before they were written down did you consult any other officers what the bearings were?—A. Yes; I consulted the second and third and they agreed with me.

Q. They all remembered them the same?—A. Yes.

Q. There was no suggestion they might have been something else?—A. No.

Q. When did you first see the "Proteus"?—A. Just as we were swinging around.

Q. You did not see her before you got under way, did you?—A. No.

Q. When you saw the "Proteus," where was she in the channel?—A. She was coming up Ambrose Channel, I could not tell you exactly what part.

Q. You testified she was on her starboard side of the channel, did you not?—A. Yes; I did testify that.

Q. Is that correct?—A. Correct.

Q. That she was close to the red starboard buoy?—A. She was quite close to it. I could not say how close she was to it.

79 Q. The "Proteus" kept her course until she sounded two blasts?—A. Yes.

Q. And then you saw her head swing over to port?—A. Over to port.

Q. At the time the two short blasts came from the "Proteus" how far away do you think the "Port Philip" was from these anchored vessels on the side of the channel?—A. About 1,500 feet, if I remember rightly.

Q. You had seen the "Proteus" before that?—A. Yes.

Q. And you are quite sure that is the first time she blew her whistle?—A. Yes, quite.

Q. After she blew the two blasts did you keep watching her?—A. Yes; watching her to see what was going to happen next.

Q. What happened next, the "Port Philip" blew one?—A. She blew the alarm after.

Q. Did she blow one?—A. Yes, one.

Q. One followed by the alarm?—A. Yes.

Q. Were you watching for the "Proteus" to answer with one?—A. Yes.

Q. Did she answer it?—A. No.

Q. You did not hear her blow one?—A. The only whistle I heard from the "Proteus" was the two blasts after the last of our one blasts.

Q. You never heard her blow one after the two?—A. No.

Q. You never heard her blow three?—A. No.

Q. And you were watching her?—A. Watching her.

Q. You think that at the time the "Proteus" blew the two blasts she was about one-quarter of a mile away?—A. Yes.

Q. How was her course then with reference to yours, about right angles?—A. Yes.

80 Q. Now, the captain has testified that after the "Proteus" blew the two blasts she changed her course to port about three points. Do you agree with that?—A. Two to three points. I would not like to say.

Q. But it was enough to be easily noticed?—A. Oh, quite; yes.

Q. You think it was easily two points?—A. Yes; quite a distinct operation.

Q. Could it be more than two points, do you think?—A. It might have been two to three.

Q. After that she came back to her own starboard?—A. Yes.

Q. How much would you say that change was before the collision happened?—A. She would come back two points to be heading on to the ship.

Q. She would come back two points anyway?—A. Yes; and then she swung to starboard more.

Q. Swung to starboard more than her original course?—A. Yes.

Q. When she struck the "Port Philip" her bow was leading aft on the "Port Philip"?—A. Yes, sir.

Q. How far away do you think the "Proteus" was when she stopped swinging to port and started her swing to starboard?—A. About 750 feet, I think it was.

Q. Did you understand what the "Proteus" meant when she blew two whistles?—A. I took it to mean she was altering to port.

Q. That would mean she was going across your bow?—A. Yes, sir.

Q. What did you take it to mean when the "Port Philip" blew one blast followed by an alarm?—A. I did not know what the alarm signal was.

81 Q. When you heard the one blast what did you take that to mean?—A. When the first one blast was blown and the subsequent single blasts, I took it to mean to draw the attention of any other vessel that we were coming out of the anchorage.

Q. Then you say the two blasts of the "Proteus" meant that he intended to cross your bow?—A. Yes; I took it to mean he was altering his course to port.

Q. Your next signal after the two blasts, what did you take that to mean?—A. A long blast and a series of short ones, and I did not know what they indicated.

Q. You did not know what that meant?—A. No.

Q. Do you think you continued your same speed after you passed into the channel until the collision?—A. I am quite sure of that; yes.

Q. You are sure you did not stop?—A. Quite sure.

Q. You would have noticed it if you had?—A. Yes.

Q. Do you think you increased speed?—A. Picking up speed all the time.

Q. That was noticeable from where you were?—A. Yes.

ANTHONY CANNAVALE, called as a witness on behalf of the libelant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. What is your occupation?—A. Sandy Hook pilot.

Q. How long have you been a Sandy Hook pilot?—A. 31 years the first of this month.

82 Q. You have not been feeling well lately, have you, Mr. Cannavale?—A. The last few days.

Q. The last few days you have been in bed sick?—A. Yes.

Q. We will try and be as easy with you as we can. Were you the pilot of the "Port Philip" on October 16, 1918?—A. Yes, sir.

Q. When did you go aboard her?—A. About 8.45 in the morning.

Q. Thereafter did you get her under way?—A. Yes, sir.

Q. About what time did you get under way?—A. A few minutes to ten, three or four minutes to ten.

Q. How was the weather?—A. Fine; moderate westerly wind; clear.

Q. And the tide?—A. Ebb.

Q. What strength was it running?—A. 2 to 2½ knots.

Q. About 2½ knots?—A. Yes, sir.

Q. After you got under way what course did you first take and at what speed?—A. Northerly direction, half speed.

Q. Were any boats anchored ahead of you on either side?—A. On either side were two slightly on our port bow, and one very near ahead.

Q. Did you go ahead to clear the vessels?—A. Yes; the first two.

Q. Did you go under a port helm?—A. First slightly to port to get room to clear the vessels.

Q. When you got past the vessels what did you do with the helm then?—A. Put it slightly to starboard.

Q. What was your intention in doing that going out between them?—A. To go out between them.

Q. Where were you bound?—A. Bound to sea, Ambrose Channel.

83 Q. To join the convoy outside?—A. Join the convoy outside.

Q. You were present when this Exhibit 11 was prepared, were you not? Is that your signature?—A. Yes.

Q. Does that represent in a graphic way, but not to scale, what your testimony would be as to the position of these vessels and the course of your vessel?—A. Yes, sir.

Q. When you put your helm to starboard was anything done with the engine?—A. I slowed down on account of two vessels coming down.

Q. Coming down the channel?—A. I did not want to come out then on account of being in their way.

Q. They were coming down with the tide?—A. Yes, a Brazilian steamer and a sand digger.

Q. Then did you go ahead on the starboard helm?—A. After those vessels passed I came on a starboard helm.

Q. Was anything done with the engines then?—A. Full speed ahead.

Q. When did you first blow a signal, and what?—A. As soon as I passed the line of vessels.

Q. What did you blow?—A. Blowed a short blast, a little longer than a short blast, so the "Proteus" would hear my whistle.

Q. When did you see the "Proteus"?—A. When I was getting under way.

Q. Where was the "Proteus"?—A. In the first leg of Ambrose.

Q. When you blew that one blast where was the "Proteus" then?—A. When I blew the blast the "Proteus" was just passing the upper buoys 17 and 18 at the end of the channel.

84 Q. The "Proteus" at that time was passing buoys 17 and 18 of Ambrose?—A. Yes.

Q. Do they mark the northern end of Ambrose Channel?—A. Yes, sir.

Q. Above those is there any name for the channel?—A. No proper name; no, sir. I do not call it any name. The main channel, Coney Island Channel, and Ambrose Channel, come together.

Q. You told us you went full speed ahead?—A. Yes.

Q. What other signals did you blow after the one?—A. I waited a while and did not get an answer from the "Proteus," and gave another blast. I waited to get an answer. I waited a while, looked around watching for the "Proteus" to answer and he did not answer. I steadied my helm and blowed another blast and got no answer, no response. I went along a little longer and blowed another blast and got an answer of two blasts.

Q. You got an answer of two blasts from the "Proteus." How far away was the "Proteus" then, do you judge?—A. About a quarter of a mile.

Q. When the "Proteus" blew the two blasts did you notice an alteration in her course?—A. As soon as she gave the two blasts I could see her turning to port.

Q. Under a starboard helm apparently?—A. Under a starboard helm.

Q. What did you do then?—A. I gave the alarm right away.

Q. Did you blow one blast?—A. No, sir, the alarm.

Q. Then what did you do?—A. Then I gave one whistle and the alarm again, and then one whistle and the alarm again.

85 Q. Did the "Proteus" reply to any of those signals?—A. No.

Q. Did you notice a change in the "Proteus"?—A. After a while it seemed to me to be on a port helm, because I could see the mast coming on.

Q. Was she swinging to port or starboard?—A. Swinging to starboard.

Q. What did you do then to the engine or helm?—A. When I saw her swinging to starboard I put her full speed ahead. I gave another ring when she got pretty near, directly over our bridge. She was almost over our bridge, and I put the helm hard astarboard.

Q. What was the purpose of putting the helm hard astarboard?—A. To try to get my stern from her bow to avoid the collision if possible.

The COURT. You tried to snap your stern away?

The WITNESS. Yes.

By Mr. BRADLEY:

Q. You did not succeed?—A. No.

Q. Did you notice the speed of the "Proteus"?—A. She was coming up at a very good speed.

Q. Could you see, yourself, any apparent diminution of it?—A. No sir; although she might have gone astern on her engines, but she did not seem to go astern.

Q. If she had gone astern could she have gone astern long before the collision?—A. Yes.

Q. Were your engines astern from the time you left the anchorage to the collision?—A. No.

Q. Did you ever blow three blasts from that time to the time of the collision?—A. No.

86 Q. I show you Exhibit 10, which I will state to you was an exhibit presented at the naval trial where you testified, and ask you if you then marked the place of the collision on that chart?—A. Yes.

Q. What mark is the place of the collision there that is yours [pointing to the circle with an X in it just below the letter B]. Captain Jack places it at B. You place it a little further south and a little further west?—A. Yes.

Q. What effect did the collision have on the headings of the two vessels?—A. They both came to port.

Q. That is, the bows swung to port and the sterns to starboard?—A. Yes.

Q. After the collision how was the "Port Philip" headed?—A. She was heading about south by east. The black buoys of Ambrose Channel were on the starboard bow.

Q. The collision took place well north of Ambrose?—A. About a mile.

Q. How far was the place of collision from the nearest vessel anchored to the eastward, about?—A. At least 2,000 feet.

Q. In all these 31 years you have been a pilot have you been a pilot in New York Harbor?—A. Yes, sir.

Q. You know these waters pretty well, you ought to?—A. I think I do.

Q. How does the tide run at that point on full ebb, 2½ knot tide?—A. At least south by east.

Q. At that point?—A. At that point.

Q. After the collision did the "Proteus" keep her bow in the hole a while?—A. For a short while.

Q. Then she backed out?—A. Yes.

Q. Then what did you do with your vessel?—A. I tried to beach her on the west bank.

87 Q. Did you succeed?—A. I did not succeed, sir.

Q. The engines were ordered ahead?—A. Full speed ahead, the helm hard aport.

Q. Did the vessel respond on the helm?—A. Responded on the helm a couple of points, but did not go through the water.

Q. She was sinking rapidly?—A. Very rapidly.

Q. The place she sank on this chart, Exhibit 10, was marked by Captain Hansen with a circle with a W in it. Do you agree with it?—A. Exactly right.

Mr. BRADLEY. The evidence was Captain Hansen went there afterwards.

The COURT. I understand.

Mr. BRADLEY. I might state the handwriting on both these exhibits is my own.

Q. Was the "Port Philip" flying convoy signals?—A. Yes.

Q. And were all the other vessels?—A. Yes.

Q. Had any of the other vessels gone out ahead?—A. One or two, but they were to come from the upper bay.

Q. You were one of the first to go out?—A. I was the first one to move from Gravesend Bay.

Q. From that particular anchorage?—A. Yes.

Q. The anchorage you were lying in was made especially for convoy vessels?—A. Yes; a couple of weeks previous to the accident.

Q. What were the limits?—A. To the east of a line from Fort Lafayette to the red buoys.

Q. From Fort Lafayette to buoy 18?—A. Yes.

Q. And east of that line. And south?—A. South of a line drawn from the lighthouse on Coney Island to a tank on Hoffman Island.

Q. Norton Lighthouse to the tank on Hoffman Island. South of that line?—A. Yes.

88 Q. Did you see that oil tow come up ahead of you?—A. Yes.

Q. Are these vessels seen ahead of the "Port Philip" on Exhibit 9, the oil tow?—A. Yes, sir.

Q. Is this the vessel that was towing her right here?—A. There is the barge [indicating].

Q. Do you see it here?—A. Yes.

By the COURT:

Q. That was coming down from the upper bay?—A. Coming up the main channel.

Q. But the boats you said that went out ahead of you came from the upper bay?—A. They came from the upper bay.

Q. They did not come from your anchorage?—A. No; not from our anchorage; from the upper bay.

Cross-examination by Mr. WYTHE:

Q. When you went out to go aboard the "Port Philip" how many vessels would you say were anchored in the convoy anchorage?—A. Quite a few. I did not count them.

Q. What is the best estimate you can make, as many as thirty?—A. Oh, I do not think quite as many as thirty, but there were quite a few. I did not count them.

Q. Would you say there was twenty of them there?—A. I say I did not count them, but there were quite a few.

The COURT. Were there more than ten?

The WITNESS. Yes, there must have been twenty; but I did not count them.

By Mr. WYTHE:

89 Q. Now, this anchorage limit you told us about from buoy 18 to Fort Lafayette, that means the prolongation of the east line of Ambrose Channel?—A. Yes.

Q. If you extend that line of buoys it will mark the anchorage?—A. Yes.

Q. Did you notice when you went out if any of the convoy vessels at the anchorage were to the westward of that line?—A. No, sir. I did not see any to the west of the line.

Q. They were anchored pretty close to the line?—A. Quite close to the line, but to be inside the line.

Q. How far in from that anchorage line was the "Port Philip" when you boarded it?—A. I should say about 500 or 600 feet.

Q. Then there were ships between the "Port Philip" and the anchorage limit on the west side?—A. No, sir. We were the outside one.

Q. She was the outside one?—A. Yes.

Q. After you got under way you headed a little bit to the eastward under a port helm, so that that brought some vessels between you and the channel?—A. Yes, sir.

Q. I understand you altered your head about one point to starboard?—A. About one point.

Q. Before you were ready to starboard your helm and go out you were going slowly?—A. Slow; yes, sir.

Q. When you first got under way did you blow any whistles?—A. No.

Q. When was the first whistle you blew?—A. I just crossed the line of the vessels on a starboard helm after crossing the line.

Q. That was the first whistle you blew?—A. Yes.

Q. What speed were your engines going then?—A. She was going full speed. About 5 knots.

90 Q. The engines were going full speed?—A. Yes.

Q. But she had not picked up all of her headway?—A. Had not picked up all her headway.

Q. When you starboarded to come around and go out you did not have to pass the stern of more than one vessel. There was only one vessel between the "Port Philip" and the channel?—A. Two vessels—more than two—no, between the "Port Philip" and the channel, one vessel.

Q. One vessel?—A. Yes.

Q. Then you passed between the bow of one and the stern of the other to get out?—A. Yes.

Q. And it was when passing between those two vessels you blew your first long blast, is that correct? Do you understand the question?—A. No.

Q. It was when you were passing between the two vessels that you blew the first long blast?—A. Not very long. Longer than the usual short blast for the "Proteus" to take notice.

Q. What did that first blast mean?—A. Port blast, single blast.

Q. Were you blowing that to the "Proteus"?—A. Yes.

Q. It was not an alarm signal to notify vessels you were coming out?—A. No.

Q. Did you blow a long blast to tell vessels in the harbor you were coming out?—A. No.

Q. The first blast you blew was blown for the "Proteus"?—A. Yes.

Q. What does that mean?—A. I am going to pass you on my port side.

Q. That would make you cross his bow?—A. Yes.

Q. And you got no answer to that?—A. No.

Q. And you waited for an answer?—A. Yes.

Q. And you expected an answer?—A. Certainly I did.

91 Q. And when you did not get it you blew again?—A. Yes.

Q. Three times?—A. Four altogether.

Q. Before you got any answer?—A. Yes.

Q. You kept repeating that blast because it was necessary to get an agreement with him?—A. He must answer it, surely.

Q. When the "Port Philip" crossed that east line of the channel that is, when you blew your first long blast, when you came out between those two ships?—A. Yes. They were on the anchorage. The edge of the channel is further up.

Q. How far up?—A. 500 feet.

Q. These vessels were 500 feet inside the anchorage?—A. Yes.

Q. It was when passing these vessels you blew a long blast?—A. Yes, as I passed the line of the anchorage.

Q. You do not mean the line from the buoy?—A. No; the line of anchorage of the two ships.

By the COURT:

Q. Do you say those ships were 500 feet inside the line?—A. 500 or 600 feet inside the line.

Q. A line from the buoy to Fort Lafayette?—A. Yes.

By Mr. WYTHE:

Q. At that time you had already seen the "Proteus" coming up, you said?—A. Yes.

Q. When you blew the first blast, how far away did the "Proteus" appear to be?—A. When I blew the first blast, about a mile.

Q. About a mile on the first blast?—A. About a mile, or a little less.

92 Q. Maybe a little less?—A. Yes. About a mile.

Q. And at that time the "Port Philip" was about right angles of the channel line?—A. When I blew the first blast; no, sir.

Q. How were you heading?—A. About northwest.

Q. Northwest?—A. When I blowed the whistle?

Q. Yes.—A. Northwest.

Q. And you were swinging under a starboard helm?—A. A starboard helm; yes, sir.

Q. Where was the "Proteus" at that same time when you blew the first blast with reference to the center of the channel?—A. She was east of the center.

Q. Would you say she was close on the starboard side, on her own starboard side?—A. She was on her own starboard side of the channel.

Q. Could you estimate her speed?—A. She was coming at least 11 knots, or 12.

Q. That is over the ground or through the water?—A. Through the water.

Q. That would give her about 10 knots over the ground?—A. Yes. About 12 knots was the speed.

Q. Still, at that time when you blew the first long blast, how did the "Proteus" bear from you?—A. When I blowed the first blast, abaft the beam.

Q. You were heading northwest?—A. Northwest westerly.

Q. And swinging to port all the time?—A. Swinging to port.

Q. Was she very much abaft your beam then?—A. Two or three points abaft the beam, three points.

Q. At that time you were going about 5 knots?—A. 5 knots, about.

Q. And your one-blast signals were about one minute apart?—A. About that.

93 Q. Would it be less than a minute or more than a minute between?—A. I think a little more than a minute, might be a little more than a minute.

Q. And the object in blowing those whistles was to get an answer from the "Proteus"?—A. Yes, sir.

A. You were expecting her to answer with one?—A. Yes, sir.

Q. That is what you wanted?—A. That is what I wanted, and I think I had a right to it.

Q. When you heard two blasts from the "Proteus" you were how far away from her?—A. about a quarter of a mile.

Q. Were you then heading about right angles to the channel?—A. Pretty near right angles.

Q. How did she bear from you then?—A. Right on our beam, heading right on to the bridge.

Q. Heading right on to you?—A. Right on to the bridge.

Q. The bridge is 150 feet abaft the bow?—A. I do not know. I think 170 or 180 feet.

Q. When she blew two she was right on to your bridge?—A. Yes.

Q. You were then going how fast?—A. About 5 or 6 knots.

Q. Speed increasing all the time?—A. Speed increasing a little bit.

Q. When that two blasts came, how many minutes do you think it was before the collision?—A. About two minutes.

Q. What did you understand the two blasts to mean?—A. She intended to cross my bow.

Q. That is what you understood?—A. Yes, sir.

Q. You answered that right away?—A. I answered with an alarm whistle.

Q. And you followed with one blast?—A. And the alarm.

94 Q. What did that mean?—A. The alarm?

Q. The alarm and one blast?—A. The alarm was danger the way she was going.

Q. What did one mean?—A. I was staying on my course.

Q. Intending to cross her bow?—A. No; because I had steadied my helm that time.

Q. You had steadied your helm that time?—A. Yes.

Q. It meant you intended to keep on and pass him on your port side?—A. Yes.

Q. You did not notice any change in the "Proteus'" course before she blew two blasts, did you?—A. I noticed her changing her course and the same time she gave me the two blasts.

Q. Not before that?—A. Not before that.

Q. And she changed around to her port?—A. To her port.

Q. About how many points?—A. I should judge around 3 points.

Q. So that then she headed forward of the bridge?—A. Yes; forward of the bridge.

Q. She did not keep that way very long?—A. No, sir.

Q. She came right back to starboard?—A. Came to starboard.

Q. How much did she come to starboard all the way from her port swing, how many points would you say she came to starboard?—A. She came to starboard until she struck us.

Q. How many points was that?—A. About seven or eight points.

Q. When she struck you the blow was leading aft on your stern?—A. Leading aft, six or seven points; it must have been more than that.

95 Q. Mr. Cannavale, it is going to be claimed in this case the "Proteus" almost right away after she blew two blasts reversed her engines full speed. Do you think she did that?—A. She might, but I doubt it. I do not want to contradict; she might have done it, but I could not say.

Q. You could not tell?—A. Could not tell.

Q. Did she seem to slow her speed any before the collision?—A. She did not seem to slow much.

Q. Do you think she was going 12½ knots through the water when she struck you?—A. No; not so much, but she was going quite fast.

Q. When the "Proteus" blew the two blasts to you you were then clear of the anchorage ground—when she blew two?—A. I was a long way from the anchorage ground.

Q. How many lengths clear?—A. About 700 or 800 feet.

Q. That is from the anchored vessels or from the anchorage line, which?—A. From the line, from the channel, from the edge of the channel, 800 feet. That means I was to the west of the edge of the channel 700 or 800 feet.

Q. That is when you got the two blasts from the "Proteus"?—A. Yes.

Q. About what was the angle of the collision between the two vessels, about how many degrees?—A. I should say about 70 degrees, 65 or 70 degrees.

Q. After the two blasts of the "Proteus" did you hear any more signals from her?—A. No, sir.

Q. Nothing before the collision?—A. No.

Q. You were watching for more signals?—A. Yes, sir.

Q. When you heard that two blasts there was no doubt in your mind what she intended to do, was there?—A. Yes, sir.

96 Q. Did you know what she was going to do when she blew the two?—A. I could see right away after she blew the two blasts she intended to cross my bow.

Q. You understood that right away?—A. Yes.

Q. Don't you think that when you heard those two blasts and saw her swinging to the left it was proper for you to stop and back your engines?—A. She came back of me again and both swung to starboard——

Q. I mean when she blew the two blasts?—A. Yes, sir, but right afterwards she came back to starboard, coming with a port wheel.

Q. She went to port first?—A. Went to port first and then she came back to starboard.

Q. When she blew the two wasn't that a good time for you to stop and back your engines?—A. I suppose it would, but then she came right back of me and before I could do anything she was on the starboard swing.

Q. It happened inside of two minutes?—A. What?

Q. Between the two blasts and the collision?—A. Yes, but she swung to starboard just a few seconds after she swung to port.

Q. Now, when you did not get any answer to the first, second, and third blasts of your whistle, didn't you think that the "Proteus" had not heard it?—A. The weather was so fine she could hear my whistle, but she was coming along so nicely, the least alteration of her helm would come under my stern.

Q. You could not get any answer to your whistles?—A. No, sir.

Q. You did not stop, though; you kept right on?—A. Yes.

97 Q. Now at the time your first signal was blown coming between the two ships, you were then maneuvering to get down the channel?—A. Yes, sir.

Q. And your course when you got on it was straight down Ambrose Channel, that is the course you were maneuvering to get on?—A. Yes.

Q. And the collision happened before you got on that course, didn't it?—A. Yes, sir.

Q. About how long was it after the collision before the "Port Philip" sank?—A. About 14 minutes; 14 or 15 minutes, about.

The COURT. What do you contend, the rule of special circumstances, Mr. Wythe?

Mr. WYTHE. Yes.

The COURT. That is what you are contending?

Mr. WYTHE. That is what my whole case is based upon.

Q. When the "Proteus" started swinging to starboard, was that after you blew the alarm and the one blast?—A. After I blowed the last alarm and one blast.

Q. Then he started swinging to starboard?—A. Yes.

Q. Before that he was swinging to port?—A. Yes, sir.

Redirect examination by Mr. BRADLEY:

Q. Do you remember the names of the two vessels between which you came?—A. I think I do. The first one was the "Cherry Leaf," the next the "Cape Ann."

Q. Sure the name was "Ann, Cape" something?—A. Yes; and one was the "Bramble Leaf."

Q. And then the "Port Philip"?—A. Yes.

Q. If at the time the "Proteus" blew two blasts and
98 directed her course to port, if she had blown one blast and put her helm to port, right rudder, would she have cleared you?—A. She would not need to put the helm at all. She would clear us without altering the helm or speed.

Q. If you, at the time she blew two, had backed your engines, would there have been a collision? If, at the time she blew two, you had backed your engines, would you have hit her?—A. More likely we would come together with our quarters.

By the COURT:

Q. Where is the engine room located?—A. In the center of the ship.

Q. Right in the center?—A. I think in the center. I was aboard the ship only a couple of hours.

Q. If you had gone astern at the time she blew the two whistles, where do you say she would come in contact with?—A. Then I would be swinging, and if I swung I would swing to starboard, and coming port to port, the sterns would come together.

FRANK A. BUTLER, called as a witness on behalf of the libelant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. You are a Sandy Hook pilot?—A. Yes, sir.

Q. Where do you live?—A. Brooklyn.

Q. How long have you been a Sandy Hook pilot?—A. Since 1916, August.

Q. On October 16, 1918, did you see the collision between the "Proteus" and the "Port Philip"?—A. Yes.

99 Q. What vessel were you on?—A. The "Emanuel Noble."

Q. Did you take her to sea later to join the convoy?—A. Yes, sir.

Q. I show you libelant's Exhibit 10, Chart 369 of New York Harbor, and ask you if you can locate the place where your vessel was lying, the "Emanuel Noble," on that morning?—A. Yes, sir.

Q. Where was she lying?—A. Her stern was on a line between the nun buoy of the east bank and buoy 18 on Ambrose.

Q. Will you draw a line from those two buoys on this chart?

(The witness did so.)

Q. Will you mark the position of your vessel with her stern on that line?

(The witness did so.)

Q. Will you put the letters E N to indicate the name of your vessel, "Emanuel Noble," on either side of the vessel on the chart?

(Witness did so.)

Q. How was the tide?—A. The tide was running ebb, sir.

Q. Where were you when your attention was attracted, and how was it attracted to the collision?—A. I was in the chart room and the captain drew my attention to it and said it looked as though there would be a collision.

Q. When you got out, how long after were the vessels in collision?—A. It was a matter of seconds.

Q. From the position of your vessel could you see Craven Shoal buoy at the time of the collision?—A. No, sir.

Q. Why?—A. The vessels obstructed the view of Craven Shoal. They were in a line with me and Craven Shoal when they collided.

(No cross-examination.)

100 JOHN ANDERSON, called as a witness on behalf of the libelant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. You were the third officer of the "Port Philip?"—A. Yes, sir.

Q. What certificate do you now hold?—A. Master.

Q. At the time what did you hold?—A. Second mate.

Q. How long have you followed the sea?—A. Ten years.

Q. At that time?—A. At that time four years.

Q. On the morning of October 16, 1918, when you got under way where were you stationed?—A. The starboard end of the bridge.

Q. What duties did you have there?—A. To ring the telegraph, and note the times the orders were given to the engine men.

Q. Did you keep record of the movements of the engines?—A. Yes, sir.

Q. Is the little book I hand you such record?—A. Yes, sir.

Q. Are the entries in it in your handwriting?—A. Yes, sir.

Q. When would you have gone off watch that day if the collision had not occurred?—A. At noon.

Q. Would you then have transferred these entries into the ship's rough log?—A. Yes.

Q. Where was that?—A. In the chart room.

Q. The first entries here read, "Port lifeboat," and then various names, I will omit them. The next entry in lead pencil, "9.48 stand by." Next "9.50 commenced." Next, "9.57 away." And
101 then two vertical lines. What do they mean?—A. Half speed ahead.

Q. "10.07" and one vertical line. What does that mean?—A. Slow ahead.

Q. "10.10" and three vertical lines. What do they mean?—A. Full speed ahead.

Q. The next, "10.13" with seven vertical lines. What do the mean?—A. That is the extra spurt asked for.

Q. At what time were those entries made?—A. Directly as I ran them to the engine room.

Q. From whom did you receive the orders?—A. The pilot.

Q. Are these the only engine orders you transmitted to the engine room?—A. Yes.

Q. The next page, also in lead pencil at the same time are the following entries, "9.48 stand by; 9.50 commenced to heave up 9.57 anchor away half ahead; 10.07 slow ahead; 10.10 full ahead 10.13 extra spurt; 10.15 collision." When did you make those entries?—A. After we landed.

Q. Why did you make those?—A. To explain my shorthand in the book.

Q. To explain your entries on the previous page, to explain your private marks?—A. Yes.

Mr. BRADLEY. I offer this record in evidence.

(Marked "Libelant's Exhibit 12 in evidence.")

Q. I show you libelant's Exhibit 10, which contains the notation of the anchor bearings of the "Port Philip," and your name appears to be signed; is that your signature?—A. Yes, sir.

Q. Are those anchor bearings as they are now correct?—A. They were, yes, sir; at the time.

102 Q. Did you take the anchor bearings of the "Port Philip" any time after she came from Boston and anchored in New York?—A. Every time I was on watch I took them.

Q. I think you were also present when libelant's Exhibit 11 was prepared, were you not?—A. Yes, sir.

Q. Is that your signature?—A. Yes, sir.

Q. That was done in my office, was it not?—A. Yes, sir.

Q. Does that represent in a graphic way what your testimony would be as to the course of your vessel and the position of the other anchored vessels, although not drawn to scale?—A. Yes, sir.

Q. After you got under way will you describe the course of your vessel?—A. We proceeded up the harbor making a little to the eastward, and then we came around on a starboard helm, reducing the speed to slow at the time.

Q. What, if any, signals were given by your vessel?—A. Gave one blast as we were coming around on the starboard helm.

Q. Was that blast repeated?—A. Yes.

Q. How many times was it repeated before you had a response from the other vessel?—A. Three times.

Q. Did you get a reply?—A. After the fourth signal we got a reply.

Q. Where was your vessel at the time with respect to the two vessels between which you passed to get into the channel?—A. How many feet away?

Q. How far to the westward was she when you got the two blasts of the "Proteus"?—A. About 1,000 feet, I should say.

Q. Did your vessel make any reply?—A. Yes; we replied with one blast and the alarm signal.

103 Q. How far away was the "Proteus" at that time?—A. About 1,500 feet.

Q. Was she coming up the channel?—A. Yes.

Q. She had you on her starboard hand?—A. Yes.

Q. Did you notice any alteration in the course of the "Proteus" when she blew two blasts?—A. Yes, sir.

Q. What did you notice?—A. An alteration to port.

Q. How much of an alteration?—A. One to two points.

Q. After you answered did you notice a further alteration on the "Proteus'" part?—A. Yes, she steadied, and commenced to come back under a port helm.

Q. That would be, as they call it in the Navy, a right rudder?—A. Yes, sir.

Q. Directing her course to starboard?—A. To starboard.

Q. Where did she strike you?—A. On the port quarter.

Q. Did you notice any diminution in the "Proteus'" speed as she approached you?—A. No, sir.

Q. Are you able to swear whether her engines were put astern?—A. No.

Q. If they were put astern, from your experience at sea, would you say they were put astern long before the collision?—A. They could not be put astern very long before the collision.

Q. When you say very long, what would be the longest time they could be put astern before you would notice an effect on the bow wave and speed?—A. You would notice it in two minutes.

Q. If they had been astern you would notice it?—A. Yes.

104 Q. And you did not notice it?—A. No.

Q. On your vessel were the engines ordered astern?—A. No.

Q. Did you ever blow three blasts?—A. No, sir.

Q. If at the time the "Proteus" blew two and altered her course to port she had blown one and continued on her course would she have cleared you?—A. Yes; I think she would.

Q. She struck you how far from the stern, as it was?—A. About 30 feet, I think.

Q. What was the effect of the collision on the heading of the two vessels?—A. It swung the "Port Philip's" head to port and the stern to starboard.

Q. What was the effect on the "Proteus"?—A. Her head swung to port and her stern to starboard.

Q. So after the collision how was the "Port Philip" headed?—A. About south.

Q. Did you remain on the bridge after the collision?—A. No.

Q. Then you do not know what was done with the engine of the "Port Philip"?—A. No.

Q. Did you notice any movement of the "Port Philip" through the water after the collision?—A. I can not say I did.

Q. If you noticed any it was very slight?—A. Very slight.

Q. Did she settle rapidly?—A. Yes.

Q. The photographs you have seen before that are here in evidence indicate how she settled, do they not?—A. Yes.

Q. How did you get off?—A. In the starboard cutter.

Q. Picked up by the "Hudson"?—A. Yes.

(No cross-examination.)

105 CLAUDE HERSEE, called as a witness on behalf of the libelant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. What is your occupation?—A. Officer in the Mercantile Marine.

Mr. BRADLEY. I would like to ask Mr. Anderson one more question.

JOHN ANDERSON, recalled.

By Mr. BRADLEY:

Q. What vessel of the Commonwealth & Dominion Line were you last on?—A. The "Port Philip."

Q. Are you not with that line any longer?—A. No.

Q. You came here to attend this trial from the other side?—A. Yes.

CLAUDE HERSEE resumed the stand.

By Mr. BRADLEY:

Q. By whom are you employed?—A. The Commonwealth & Dominion.

Q. What vessel did you last serve on?—A. The "Port Chalmers."

Q. Were you detached from her to come here and attend this trial?—A. Yes, sir.

Q. What certificate, if any, do you hold?—A. Master's certificate.

106 Q. How long have you held it?—A. Five years.

Q. How long have you followed the sea?—A. Fourteen years.

Q. That is at this time?—A. At this time, yes, sir.

Q. On October 16th you were second officer of the "Port Philip"?—A. Yes.

Q. Did you take the anchor bearings you heard about when on watch?—A. Yes.

Q. You verified them, as shown on this exhibit which I will now show you, libelant's Exhibit 10, the chart?—A. Yes; I remember that quite well.

Q. Those anchor bearings as there shown have your signature there below them?—A. Yes.

Q. You assisted in the preparation of that notation there?—A. Yes, sir.

Q. On the morning of October 16, 1918, where were you stationed?—A. On the after deck.

Q. What were your duties there?—A. Watching the steering gear to see the fog buoy did not foul it, and also the log was ready for running.

Q. Was the steering gear tested before you got under way?—A. Yes, sir.

Q. How was it found?—A. In good working order.

Q. After you got under way describe the course of your vessel so far as you noticed it from your position.—A. I remember proceeding to the northward. We were inside some ships to the westward. We proceeded to the northward, and turning evidently to go out between two of them.

Q. You do not remember the names of the two you went between?—A. No; I paid no attention to them.

Q. What attracted your attention to the fact that anything unusual was occurring?—A. A considerable amount of signaling on our part.

107 Q. Did you take note what those signals were?—A. No.

Q. You heard a great many whistles, but can not tell what they were now?—A. No, sir.

Q. Did you, when you heard this amount of signaling, look up to see what is was for?—A. I looked out. I was on the afterdeck by No. 5 hatch.

Q. Which side of the vessel?—A. The port side of the vessel.

Q. What did you see?—A. I looked out and saw a large collier, which later turned out to be the "Proteus," coming up the channel at a very rapid speed.

Q. Had you passed the line drawn between the two vessels at that time?—A. Yes, sir.

Q. How far away was she from you then?—A. About a half a mile.

Q. In your position from the afterend of your ship you had a clear view of the "Proteus"?—A. Down the channel, yes, sir.

Q. Did you hear any signal from the "Proteus"?—A. Yes.

Q. Prior to that time had you heard signals from the "Port Philip" which you could identify as signals?—A. I think the mere fact of my looking out the port side makes me think the signal given was to a ship on the port side. I made no attempt to look out the starboard side. I can not remember the signals now. I remember there was a considerable number, but I remember I looked on the port side.

Q. You saw the "Proteus" and remember two blasts from her?—A. Two from her.

Q. Did you notice any alteration in her course when she gave the two blasts?—A. To me she appeared to be steadying then.

108 Q. You continued on your course?—A. We had starboard swing on us which we were rapidly checking.

Q. Did the "Proteus" come on toward you?—A. The "Proteus" came on toward us—pardon me—when I say we had considerable swing, I mean starboard helm swing on us, which we were rapidly checking. By that time the "Proteus" was steady. When I looked again she was rapidly swinging toward our stern.

Q. You were standing at that time where?—A. By the main rigging.

Q. Did you give orders to the men around you?—A. Yes; I told them to keep aft, and some ran aft.

Q. You thought you would be hit forward?—A. Thought we would be hit forward.

Q. Afterwards when you saw her swinging to starboard—A. By this time there were four or five men around me, and I told them we had better go forward.

Q. You ran forward?—A. Yes.

Q. How far forward were you when she hit?—A. No. 4 hatch.

Q. And she hit you at No. 5?—A. Yes.

Q. From your position in the afterpart of your vessel could you have told from the vibration or otherwise if the engines of the "Port Philip" had been put astern?—A. Yes.

Q. Can you tell us in your opinion whether they were ever put astern?—A. No, sir.

Q. You felt no vibration to indicate that?—A. None whatever.

Q. Did the force of the collision have an effect on the headings of the two vessels?—A. Yes; swung us completely around, swung our bow to port and our stern to starboard.

109 Q. Any effect on the "Proteus"?—A. It swung her too; instead of heading up the stream she was athwart the channel.

Q. Did the "Proteus" thereafter back out?—A. Yes, sir.

Q. Where did you go after the collision?—A. Up to the bridge.

Q. Who did you find there?—A. Captain Jack.

Q. *Who did you find there?*—A. *Captain Jack.*

Q. Anybody else?—A. Mr. Hall and the pilot.

Q. Do you think that after the collision the "Port Philip" made progress through the water, and if so, how much?—A. Practically none whatever. She did not do a ship's length. In my estimate, less than a ship's length. We were going ahead on the engines but there was a wash and no wake, because I was standing on the boat deck. There was a lot of disturbed water around the stern, but there was none thrown aft at all. It was disturbed water around the stern.

Q. If at the time the "Proteus" sounded two blasts she had held her course would she have cleared your stern?—A. At the time she sounded two blasts?

Q. At the time she sounded two blasts, if she had not altered her course and held her prior course, would she clear your stern?—A. Easily.

Q. Did you look to see how much distance was between you and the nearest vessels to the eastward at anchor?—A. There was about a ship's length when I first looked out and noticed the "Proteus."

Q. At the time of the collision?—A. We were well over half way into the channel.

Q. Can you give an estimate of the speed of the "Port Philip" as she came out between these vessels?—A. She was going about her usual half speed.

Q. Whatever her engines were doing?—A. Yes.

110 Q. And that would be about five or six knots?—A. Yes.

(No cross-examination.)

FREDERICK BLOMQUIST, called as a witness on behalf of the libellant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. You were a ship's carpenter on the "Port Philip"?—A. Yes, sir.

Q. Where do you live?—A. Manchester.

Q. Manchester, England?—A. Yes.

Q. How long have you followed the sea?—A. 35 years.

Q. By whom are you now employed?—A. The Furness Withy Line.

Q. Have you come here from the other side to attend this trial?—A. Yes.

Q. Do you remember the collision between the "Proteus" and the "Port Philip" in New York Harbor?—A. Yes.

Q. Where were you stationed?—A. At the windlass.

Q. Who else was there?—A. The chief officer and the boatswain.

Q. You attended to getting the anchors up that morning?—A. Yes.

Q. And you proceeded up the harbor to pass two vessels lying ahead of you on the port side?—A. Yes.

Q. After that we heard you came around under a starboard helm and went out between these vessels?—A. Yes.

111 Q. When did you first notice the "Proteus"?—A. I noticed her before we came out between those two vessels.

Q. Where was she then?—A. About one mile and a quarter away when I seen her first.

Q. Where was she then heading for?—A. Heading straight up Ambrose Channel.

Q. Did the "Port Philip" continue on her course across?—A. Yes.

Q. What signals did you hear?—A. I can not say I heard any signals, only our own.

Q. What did you hear from our vessel that you noticed?—A. I heard one fairly long blast as we came out between those vessels.

Q. Did you hear any others?—A. I heard one more probably a minute further on.

Q. And then did you hear any from the "Proteus" any time?—A. I did not.

Q. You did not hear signals from the "Proteus" any time?—A. Not until he came on top of us.

The COURT. What did you hear then?

The WITNESS. I thought I heard three, and I think that is right.

Q. You thought you heard three when on top of you?—A. Yes.

Q. How close was she to you at the time when you thought you heard three?—A. The two stems would be abreast of one another.

Q. Just indicate with these two models what you mean by two stems being abreast.—A. This is the "Port Philip" and that is the "Proteus."

Q. Just lay these two models on this piece of paper, the red being port and the green starboard, assume that is the "Proteus" and that is the "Port Philip," lay them as you think they were when the "Proteus" blew what you thought were three blasts.

(The witness did so.)

112 Q. Have you drawn on this piece of paper a representation of the "Port Philip" and the "Proteus" at the time you heard what you thought was three blasts?—A. Yes.

Q. How far should you say the bow of the "Proteus" was from the port side of the "Port Philip" at that time?—A. Practically 250 feet.

Mr. BRADLEY. I offer this in evidence.

(Marked "Libellant's Exhibit 13 in evidence.")

Q. You did not hear the "Proteus" sound a two-blast signal?—A. No; I am not sure I did. I was occupied with the windlass at the time, and probably I should not have heard it. He might have blown, but I did not hear it.

Q. Were you expecting to get orders with respect to the windlass?—A. Yes.

Q. How long after the situation shown by that diagram just drawn was it that the collision occurred?—A. That would be a minute, probably a minute and a half.

Q. Do you think it was as long as that?—A. Probably less; I am not sure.

Q. Do you think it would take the "Proteus" a minute and a half to go 250 feet?—A. It was less than that.

Q. What did you notice about the speed of the "Proteus" before?—A. Very rapid speed.

Q. Did you notice her bow wave?—A. Yes; a big wave.

Q. Was there room for the "Proteus" to have gone astern of you?—A. Plenty of room on either side of us. We were in the center of the channel when the collision occurred.

Q. Do you know whether the steering gear of the "Port Philip" was disabled by the collision?—A. It probably would have been.

113 Q. You don't know?—A. I am not sure.

Q. You think it probably was?—A. Most likely it would be.

Q. What boat did you get off on?—A. The starboard lifeboat.

Q. Did you have difficulty in launching?—A. No difficulty in launching her. We had difficulty in getting away. She was getting caught under the starboard fore davit, and afterwards she was caught by the after davit.

Q. How was that?—A. Apparently it would be the suction.

Q. The sinking of the vessel?—A. Yes.

Q. It brought the davits down to where they were catching in the lifeboat?—A. Yes.

Q. Did the effect of the collision swing the two vessels?—A. The bow to port and the stern to starboard.

Q. Both of them?—A. Both vessels alike.

Q. Did you go aft after the collision and look at the point of collision?—A. Yes; aft to my room.

Q. How near to the hatch coaming had the bow of the "Proteus" penetrated?—A. As far as I could see, I could not see properly, I had not time to examine that, but probably a foot from the coaming.

Q. Did the effect of the collision swing the two boats?—A. The bow to port and the stern to starboard.

Q. How long did you get away before the "Port Philip" sank?—A. When I got into the boat half the ship was underneath the water.

Q. Her stern then may have been on the bottom?

Mr. WYTHE. I object.

A. Very probably.

Mr. BRADLEY. I withdraw it.

114 VINCENT J. RIKER, called as a witness on behalf of the libellant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. You are a Sandy Hook pilot?—A. Yes, sir.

Q. How long have you been one?—A. Since August, 1915.

Q. On October 16, 1918, were you on any vessel?—A. Yes, the British steamer "War Coppice."

Q. Where was she anchored?—A. The southern ship in the anchorage, three-quarters of a mile north of No. 18 buoy.

Q. What vessel was anchored ahead of you?—A. The "Port Philip," slightly on my port bow.

Q. Can you tell what boat was ahead of the "Port Philip"?—A. I remember one of the Leaf vessels, but where she was, I don't know.

Q. How far from the "War Coppice" was the "Port Philip"?—A. Two or three ship's lengths north.

Q. When did you first see the "Proteus"?—A. At No. 14 buoy.

Q. I think you said you saw the "Proteus" at about Buoy 14, Ambrose?—A. Yes.

Q. The "Port Philip" was proceeding ahead in a northerly direction. Describe what from that took place, so far as you saw it and heard it.—A. At the time I saw the "Proteus" at No. 14, the "Port Philip" was getting under way. The "Port Philip" proceeded in a northerly direction to the eastward of some of the vessels anchored

and then turned out on the starboard helm, blew one blast of the whistle. The "Proteus" was then above the 18 buoy in Ambrose Channel.

115 Q. How far above?—A. Close to it, I should say a ship length or two above it; when the "Port Philip" blew the first blast she was turning on a starboard helm. There was no answer to that. Shortly afterwards she blew another one blast. There was no answer immediately, but the next whistle I heard was two from the "Proteus," then one and an alarm from the "Port Philip," and then several alarms before the collision.

Q. Did you see the collision?—A. I did.

Q. At what position in the channel or fairway did it occur with respect to the east and west direction?—A. How far from the line, do you mean?

Q. In what position with respect to the center?—A. I should say slightly to the west of the center of the channel, of the prolongation of Ambrose.

Q. From where you stood could you see up the channel?—A. Yes.

Q. How much distance would you say there was between the point of collision and the vessels anchored to the eastward?—A. Pretty close to 2,000 feet, I would say.

Q. Did you notice any effect on the headings of either vessel after the collision?—A. They both swung, both bows to port and sterns to starboard.

Q. Did you notice any lifeboat between the two?—A. Yes; before the collision I could see the starboard side of the "Proteus" all the time, but immediately after the collision I could see her port side, because I remember seeing a lifeboat lowered.

Q. Before this collision you saw the starboard?—A. Yes.

Q. And after she slewed around you could see the port side?—A. Yes; that is, in so far as I could see between the two to see the lifeboat launched by the "Port Philip."

116 Q. Did the vessels draw apart afterward?—A. From my position they drew apart, but I could not discern it as plainly as someone else could. The "Proteus" was stern on to me then.

Q. Did you see the course of the "Port Philip" after the collision?—A. Yes.

Q. Did the tide carry her down?—A. She appeared to drift in a south and slightly west direction.

Q. To the place——A. Where she finally settled.

Q. Which are marked on the charts?—A. The marks on the charts I hold was wrong.

Q. On the exhibits?—A. On the exhibits.

Q. Did you notice steam and smoke come up from the "Port Philip"?—A. Yes.

Q. Was that before she sank?—A. As she was sinking.

Q. From the time of the collision until she sank?—A. Until she settled finally on an even keel, I should say 20 minutes.

Q. If when the "Proteus" blew two she had continued her course would she have struck the "Port Philip"?—A. Most assuredly.

Q. When she blew two if she continued her course?—A. She would most assuredly have struck.

Q. Where would she have struck?—A. That is hard to determine. I am sure she would have struck her further forward than she did. I did not see a possibility of getting across her bow.

Q. You do not understand. When she blew two she altered to port?—A. Yes.

Q. If she continued that course she would strike further forward?—A. Yes, sir.

Q. When she blew two, if she continued her course——A. Before she shifted?

Q. Yes.—A. I think she would have gone under the "Port Philip's" stern.

117 Q. If she had blown one and altered slightly to starboard would she have surely cleared?—A. Absolutely.

Q. How was the speed of the "Proteus" as it appeared to you?—A. She appeared to me to be going full speed. I knew she was rated about 14 knots, and, as I say, she appeared to be going full speed by the bow wave and the fuss under her stern.

Q. From your position could you tell whether the engines went astern?—A. Yes.

Q. Did they back?—A. Yes; an instant before the collision.

Q. Before that they had been going full speed ahead?—A. Full ahead, judging by the churn up and bow wave.

Cross-examination by Mr. WYTHE:

Q. How far were you from the point of the collision?—A. I was anchored three-quarters of a mile north of 18 buoy, approximately. I was a half mile from the point of collision, probably a little bit more.

Q. The "Proteus" came up from astern of you and passed you on your port side before the collision?—A. That is the idea.

Q. How far off your port side did she pass you?—A. I was anchored three or four hundred feet east of the anchorage line; I suppose the "Proteus" would be six hundred or seven hundred feet west of me.

Q. At the time you saw the port side of the "Proteus" after the collision she had been backing then, hadn't she?—A. Oh, yes. That was after the collision I saw her port side, after they hit and swung.

Q. She had been backing then?—A. She had been backing then; yes.

118 Q. What was it that particularly attracted your attention to these two vessels?—A. I am always interested in the manoeuvring of vessels. I was on the bridge waiting for the time for us to get under way, and I noticed the "Port Philip", of course, because she was the nearest ship to me in the convoy. She was getting under way. I looked astern at the "Proteus" to see if she was flying the S, which would have meant she had a pilot on board.

Q. Did she have that signal?—A. I do not know; she had several flags flying.

Q. Did you notice other ships in the channel going up or down?—A. Yes; a Standard Oil tow coming up the old main channel, and two vessels or three had gone down before the "Port Philip" passed out there between the ships at anchor.

Q. Did any other vessels blow signals?—A. Not that I remember.

Q. The only thing you remember is the signal the "Port Philip" and the "Proteus" blew?—A. That is all.

Q. Had there been signals that morning in the anchorage ground by vessels anchored calling for pilots?—A. Not as I remember; you see, we were all assigned to these vessels the day before, to these vessels in the convoy.

Q. No other signals?—A. No other whistle signals; no.

Q. How long had you been on the bridge of your vessel before you saw the acts you have testified to here now?—A. A few minutes. I always go up and look around before I move a vessel to see how things are.

Q. These things began to happen right after you got on the bridge, that you testified to?—A. Evidently.

119 JOHN W. ACKERMAN, called as a witness on behalf of the libelant, being duly sworn, testified as follows:

Direct examination by Mr. BRADLEY:

Q. You are a Sandy Hook pilot?—A. Yes.

Q. How long?—A. Since 1911.

Q. Did you see the collision between the "Port Philip" and the "Proteus" on October 16, 1918?—A. I did.

Q. On what vessel were you?—A. Aboard the British oil tanker "Bramble Leaf."

Q. Where was the "Bramble Leaf" that morning, in the convoy anchorage?—A. Yes.

Q. Where was she with respect to the "Port Philip"?—A. Anchored to the northward of the "Port Philip."

Q. What vessel was to the northward of you?—A. An American vessel; I do not remember her last name, but a Cape something.

Q. What vessel was ahead of her?—A. I could not recall what ship was ahead of her.

Q. Do you remember what vessel was astern of the "Port Philip"?—A. I do not remember the name of the ship.

Q. Were there any other vessels anchored in the neighborhood to the westward of the vessels you mentioned?—A. No, sir.

Q. Where was your vessel lying with respect to the anchorage limits?—A. She was lying about 600 feet to the eastward of the western line of the limits.

Q. How do you fix that?—A. I had No. 16 of Ambrose on with Romer Shoal——

120 Q. A range from No. 16 to Romer Lighthouse passed through your vessel?—A. Yes; and I also had Craven Shoal about northwest of us.

Q. Were these vessels flying convoy signals?—A. Yes.

Q. What drew your attention to the situation?—A. The alarm signals.

Q. Do you know what vessel they came from?—A. Not at that time. I did not.

Q. What were you doing at the time?—A. Conversing with the chief officer of the ship.

Q. And you heard these alarm signals; then, what did you do?—A. Investigated.

Q. What did you do to investigate?—A. Went to see who it was, and saw the "Proteus" going up and the "Port Philip" was steering to the westward.

Q. At that time when you first saw them how far were they away from each other?—A. I judge in the neighborhood of about 1,000 feet.

Q. At that time where was the "Port Philip" with reference to the center of the channel, approximately?—A. She was practically about on the center of the channel.

Q. Did you notice what subsequent movements of either vessel, or signals, were made?—A. I did not notice anything until the time I heard the alarm signal, and then we proceeded to the bridge, which was only a few steps from where we were standing, and then I noticed the "Port Philip" give one whistle and blew the alarm whistle, which was not answered, and then I see her give another one; in fact, there was three altogether that I saw. The "Proteus" at that time was coming up, and I should say she was 1,000 feet off, and I noticed she had a sharp cant to port, as if under a port rudder.

121 Q. Or a starboard helm?—A. Yes. She altered her course afterward and it appeared to me as if she went full astern on her starboard engine.

Q. How near to the "Port Philip" was she at that time?—A. Not far from her.

Q. What would you call not far from her in ship lengths?—A. She was not over one ship length then.

Q. Could you see whether she went astern on the port engine or not?—A. No; I would not.

Q. From your position that was obscured?—A. That was obscured.

Q. You heard the signal of two blasts from the "Proteus"?—A. I heard two blasts, and then the alarm whistle.

Q. From the "Proteus"?—A. No.

Q. I am talking of the "Proteus."—A. I can not say I heard two blasts from the "Proteus."

Q. You did not hear two blasts from the "Port Philip," did you?—A. I heard two blasts; who it came from, I do not know.

Q. After the "Proteus" swung to port did you notice an alteration of her course after that?—A. Yes; after she went astern then I noticed her alter her course.

Q. How did she alter it?—A. To starboard.

Q. Did you see the two vessels come in collision?—A. Yes.

Q. About what angle did the "Proteus" make on the side of the "Port Philip"? Did the blow lead aft or forward?—A. As far as I could say, it may have been an angle of 45 or a little more degrees.

Q. I show you Exhibit 10 and ask you if you recall marking the position of your vessel with the letter L on that chart at the naval court of inquiry?—A. I do.

122 Q. The letter L designates the position of your vessel approximately when she lay at anchor?—A. Yes, sir.

Q. What time did the collision occur?—A. It occurred at 10.15 by the "Bramble Leaf's" clock.

Q. Did you note it on the clock at the time?—A. Yes.

Q. How long from the time you first noticed the two vessels do you think elapsed until the collision occurred?—A. I should say two or three minutes.

Q. At that time when you first saw the two vessels, if the "Proteus" had put her helm to port would she have cleared the "Port Philip's" stern?—A. When I first saw them?

Q. Yes.—A. Absolutely.

Q. If she continued her course would she have cleared?—A. If she had not starboarded she would have cleared.

Q. If she had not starboarded her helm?—A. Yes.

Q. But if she continued on without alteration she would not have hit the "Port Philip"?—A. No, sir.

Q. Did you notice the alteration in the headings of the two vessels testified to here to-day after the collision?—A. Yes.

Q. It swung both vessels bow to port and stern to starboard?—A. Yes, sir.

Q. What was the heading of the "Port Philip," as far as you could get it from your position, immediately before the collision?—A. The time I first observed her she was heading about nearly west.

Q. After the collision how was she headed?—A. Headed nearly south.

Q. What was the tide that time?—A. Ebb.

Q. How strong does it run?—A. At that stage of the tide 2½ knots.

123 Q. What direction does it run at that stage?—A. In that section the tide sets on the ebb south by east.

Q. I judge by the fact you place the collision in the center of the channel, or westward, there was plenty of room for the "Proteus" to have gone astern of the "Port Philip"?—A. Absolutely.

Q. If the "Port Philip" backed at the time you saw her do you think there would have been a collision?—A. Absolutely.

Q. How do you think it would have come about?—A. I think the "Proteus" would have gone through her midships.

The COURT. That is the most vulnerable part of the ship?

The WITNESS. Yes.

Cross-examination by Mr. WYTHE:

Q. You testified before the naval board, didn't you?—A. I did, sir.

Q. Do you remember testifying at that time that you observed these two ships no more than two minutes before the collision?—A. No more than two minutes?

Q. Yes.—A. I say two or three minutes.

Q. Do you remember at that time saying it could not have been more than two minutes?—A. I remember saying two or three minutes.

Q. I will read you one question from the record and see if it refreshes your recollection, page 59, Question 11: "Did you see the 'Port Philip' get under way?—A. No, sir. Q. Did you see her while she was under way?—A. Only just before the collision occurred.

Q. How many minutes before the collision?—A. It could not
124 have been over two minutes." Do you remember testifying to that?—A. I do not remember testifying just to those words. I say it was around two or three minutes.

Q. Do you want to correct that now?—A. I am satisfied to leave it as it is.

Q. You are testifying now. I want to know whether you consider that correct, or want to change it to two or three minutes?—A. It is perfectly satisfactory to me.

Q. Which?—A. The way it is.

Q. Two minutes?—A. Yes.

Q. You observed this collision from a position which is marked on this chart, Exhibit 10, with the letter L, is that right?—A. Yes.

Q. That letter L was placed on the chart by you?—A. By myself.

Q. How did you place it there?—A. By measuring it off at the naval inquiry.

Q. How did you locate that position there?—A. By the bearings.

Q. What bearings?—A. 16 buoy with Romer.

Q. Romer Shoal Light?—A. Yes.

Q. Any other bearing?—A. There was no other bearing given at that time, I do not think.

Q. That would only give you your east and west position?—A. Yes.

Q. How did you locate your north and south?—A. There was one ship anchored ahead of me in that anchorage, I figured I was eight or nine hundred feet south of the northern edge.

Q. What is the northern edge?—A. A line from the water tank on Hoffman Island to Coney Island Light.

Q. On Norton Point?—A. Yes.

Q. Was it between your bow and the ship ahead of you the "Port Philip" passed out?—A. Yes.

125 Q. When you first observed them the "Port Philip" had already gotten out of the anchorage?—A. She was out of the anchorage.

Q. How far out?—A. Practically about the middle line of the prevailing channel.

Q. That is the prolongation of the center line of Ambrose?—A. Yes.

Q. That is when you first saw her?—A. Yes, sir.

Q. And you say that was about two minutes before the collision?—A. When I first observed it, about two minutes.

Q. Now, you say the first thing that attracted your attention was the alarm signal, or was it two whistles?—A. The first thing that attracted my attention was two whistles followed by an alarm.

Q. Followed quickly by an alarm?—A. Yes, sir.

Q. Where were you when you heard the two whistles on that ship?—A. On the boat deck.

Q. Which side?—A. Starboard side.

Q. You could not see out of the anchorage then, could you?—A. No, sir.

Q. Where did you have to go to see that?—A. On the bridge.

Q. Did you go right up on the bridge?—A. Yes.

Q. That was above the boat deck?—A. Yes.

Q. How long did it take you to get up there?—A. It took a few seconds.

Q. Did you hurry to get up there?—A. No; I did not hurry an awful lot. It was only about ten steps from where I was standing.

Q. Do you always go up on the bridge when you hear an alarm?—A. You generally know something is wrong when you hear an alarm whistle.

Q. Your ship was not under way, and was not heaving up at that time, was she?—A. No, sir.

126 Q. Where was the "Proteus" when you first saw her after you got up on the bridge; where was the "Proteus" with reference to the beam of your vessel?—A. She was up forward of the beam.

Q. How many points forward of your beam?—A. I won't say how many points; I don't know.

Q. Approximately.—A. I can't give approximately. She was northward of the bow; that is, she was to the westward, but northward from a line drawn abaft my beam.

Q. You cannot tell whether she was one point forward of your beam or one point forward of your bow?—A. I cannot guess. I cannot recall, because I was not paying any attention to her.

Q. You noticed she changed her course to port?—A. She was on a port swing.

Q. How do you know?—A. By turning.

Q. Were you looking at the starboard side then?—A. I was looking at the whole ship.

Q. You could not see the whole ship?—A. No; only what my eyes could see.

Q. What could your eyes see?—A. The whole starboard side of her and the deck and the stern of her.

Q. By looking at the stern you judged she was swinging to port?—A. By looking at the whole ship I could see she was swinging to port.

Q. How much do you think she swung from the time you first saw her until she went as far over to port as she did?—A. That would be pretty hard to say.

Q. Would you say it was three points?—A. I would not say there points.

Q. She did not get around far enough to get straight across the channel?—A. No.

Q. Would you say going 45 degrees across the channel?—A. I would not say.

127 Q. All you know is she was swinging to port?—A. Had a port swing.

Q. And you afterwards know she swung to starboard?—A. Yes.

Q. Did you hear her sound any whistles after the first two?—A. I did not see her sound any whistles.

Q. Did you hear her sound any?—A. I would not say I heard her, because I did not.

Q. Did you hear a three-blast signal at any time?—A. No, sir.

Q. From either vessel?—A. No, sir.

Q. Sure of that?—A. Positive.

Q. You did not see the "Proteus" when she was abreast of your vessel, did you, passing you?—A. No, sir.

Q. She passed you before you heard the whistles?—A. She evidently did.

Q. How far away from the collision was your vessel?—A. I should say in the neighborhood of 2,000 to 2,500 feet, approximately.

Q. In what direction from your ship?—A. About northwest by west.

Q. Now you say when you first saw the "Proteus" she was going ahead on her engines?—A. Yes.

Q. You are sure of that?—A. She could not have been doing anything else.

Q. I am asking you are you sure?—A. The engine part—the ship was going at great speed.

Q. You do not know what the engines were doing?—A. Yes; the engines were going full speed ahead.

Q. How do you know?—A. I do not know about the speed, but they were going full ahead, because they were pushing the water from her aft.

128 Q. You testified she did go astern on the starboard engine before the collision?—A. Just prior to the collision.

Q. You could see that?—A. Absolutely.

Q. How could you tell?—A. Because of the fuss she was creating under the starboard quarter, under the starboard screw.

Q. How about the port engine?—A. That I could not say.

Q. You could not say what she was doing with the port screw?—A. No; I could not.

Q. For the reason that was on the other side of the vessel?—A. That was on the port side of the vessel.

Q. And you were on the starboard side?—A. Starboard side.

Q. Are you acquainted with Pilot Cannavale?—A. I am.

Q. Acquainted with Mr. Riker?—A. I am.

Q. You saw Mr. Cannavale before you testified before the naval inquiry board?—A. I did.

(Libelant rests.)

(Adjourned to Thursday, May 7, 1925, at 10.30 a. m.)

BROOKLYN, N. Y., *May 7, 1925—10.30 a. m.*

Met pursuant to adjournment; present as before.

Offers in evidence

Mr. WYTHE. For the Government case I offer in evidence deposition of William Wallace, navigating officer of the steamship "Proteus."

(Marked "Respondent's Exhibit A in evidence.")

Mr. WYTHE. I offer the deposition of George R. Breed, chief quartermaster of the steamship "Proteus."

129 (Marked "Respondent's Exhibit B in evidence.")

Mr. WYTHE. I offer the copy of the testimony given before the naval court of investigation of William W. McGee, quartermaster of the steamship "Proteus," with stipulation.

(Marked "Respondent's Exhibit C in evidence.")

Mr. WYTHE. I offer the testimony before the naval board of Lewis Premny, quartermaster of the steamship "Proteus," with stipulation.

(Marked "Respondent's Exhibit D in evidence.")

Mr. WYTHE. I offer the testimony of Patrick J. Murray, chief engineer of the steamship "Proteus," as given before the naval board, with stipulation.

(Marked "Respondent's Exhibit E in evidence.")

Mr. WYTHE. I offer the testimony of Harold C. Peterson, assistant engineer of the "Proteus," as given before the naval court, with stipulation.

(Marked "Respondent's Exhibit F in evidence.")

Mr. WYTHE. I offer the testimony of Everett H. Mason, assistant engineer of the steamship "Proteus," as given before the naval board, with stipulation.

(Marked "Respondent's Exhibit G in evidence.")

NIELS SOREN HANSEN, called as a witness on behalf of the respondent, being duly sworn, testified as follows:

Direct examination by Mr. WYTHE:

Q. You are a licensed master of steam vessels?—A. Yes, sir.

Q. How long have you been a master?—A. I was master of my first ship in 1905, if I am correct.

130 Q. On October 16, 1918, you were attached to the United States Navy?—A. Yes, sir.

Q. What was your rank at that time?—A. Lieutenant commander.

Q. You were in command of the U. S. S. "Proteus"?—A. Yes, sir.

Q. Will you describe to the court what the length and beam of the "Proteus" is?—A. The "Proteus" was 522 feet over all and 63 feet beam.

Q. She was a twin-screw vessel?—A. Twin-screw vessel.

Q. Can you give about the horsepower she had?—A. About 2,800 on each engine.

Q. What was her maximum speed?—A. 14 knots.

Q. On October 16, 1918, were you entering the port of New York from Norfolk?—A. Yes.

Q. You had a cargo of coal?—A. Yes.

Q. How many tons?—A. 10,500, approximately, maybe a little more, not any less.

Q. What was the draft of the vessel, the mean draft, as you entered New York Harbor?—A. 30 feet.

Q. On that draft about what would her total displacement be?—A. 22,000 tons.

Q. When you came into New York did you take on a pilot?—A. No, sir.

Q. You have a pilot's license yourself for New York Harbor?—A. Yes, sir.

Q. How long had you had a pilot's license?—A. I believe I got my pilot's license in 1903 or 1904. I would not be absolutely positive of that.

Q. Had you been coming into New York Harbor frequently?—A. Yes, sir.

Q. Without pilots?—A. Yes, sir.

Q. You were familiar generally with the channels?—A. Yes, sir.

131 Q. As you came up Ambrose Channel the tide was ebb?—A. Yes, sir.

Q. About what strength, as far as you can tell?—A. About 2½ knots.

Q. What speed was the "Proteus" making?—A. We were making revolutions for 12½ knots, and with a 2½ knot ebb, that would give us 10 knots over the bottom.

Q. The weather was clear?—A. The weather was clear; yes, sir.

Q. No wind?—A. Well, it was very light, whatever there was.

Q. How was the "Proteus" steering coming up Ambrose Channel?—A. She was steering in her normal way, I should say, as good as a ship 30 foot would steer.

Q. I mean with reference to the center of the channel?—A. We were keeping close to the red buoys.

Q. Which side of the channel?—A. The right-hand side of the channel, starboard side.

The COURT. That is the east side?

The WITNESS. The east side; yes, sir.

Q. As you proceeded up the channel did you meet any steamers coming down?—A. I recall meeting one at No. 14 buoy just as we made the turn. We may have met others, but that is the only one I recall.

Q. Did you pass well clear of that vessel, or close by?—A. We passed well clear of him, because he was well to the westward of the channel and we were away over to the eastward.

Q. After making your turning did you continue close to the starboard buoys?—A. Yes, sir.

132 Q. The No. 18, I understand, is the most northerly buoy in Ambrose?—A. Yes; that is the last buoy.

Q. After you passed No. 18 buoy were they any other vessels ahead of you in the channel?—A. No, sir; not in the channel.

Q. Did you reduce your speed any?—A. No, sir.

Q. Did you see any anchored vessels on your starboard bow as you came up?—A. There was a great many vessels anchored all the way from 18 up to Fort Lafayette.

Q. Where were they with reference to a prolongation of the easterly line of Ambrose Channel?—A. They were to the eastward of the prolongation of the easterly line of buoys.

Q. How far to the eastward?—A. They were pretty close. When they swung around they swung clear of the buoys. They needed all the anchorage they could get those days.

Q. After you passed No. 18 buoy how were you heading?—A. We were heading north on the compass, and Fort Lafayette was practically right ahead.

Q. What was the first that you saw of the steamship "Port Philip"?—A. When I saw the bow coming out between two of the vessels anchored to the east of the channel.

Q. Can you tell when you saw the bow coming out how she was heading?—A. No, sir; I could not tell how she was heading, because the remainder of the part of the vessel was obscured by the anchored ship.

Q. Could you tell that time what her speed was?—A. No, sir; I could not tell that. She appeared to be moving slowly.

The COURT. How far away were you at that time?

133 The WITNESS. I should say about 2,000 foot, four ships lengths.

Q. How did the "Port Philip" bear then on your starboard bow?—A. I should say she bore a good point on our starboard bow.

Q. What did you do, if anything, when you saw the bow of this vessel coming out?—A. The instant I saw she was moving out to the westward I saw she was getting in a dangerous position and I blew her two whistles.

Q. Why did you blow her two instead of one?—A. Because I could not get around the stern on account of the anchored ships. Her stern was not clear of the line.

Q. Did you hear signals of the "Port Philip," or any other vessels, before you blew the two?—A. No.

By the COURT:

Q. How far away were you when you blew the two whistles?—A. That was an instant after we sighted her.

By Mr. WYTHE:

Q. How far away were you?—A. When we sighted her, 2,000 feet.

By the COURT:

Q. How much could you observe of her when you saw her, you say part was obscured; how much of the "Port Philip" could you see when you first observed her?—A. I should say we just saw about abaft the forecastle head.

134 Q. Is that 60 feet from the bow?—A. I can only make a guess. I had never been aboard the "Port Philip."

By Mr. WYTHE:

Q. You say you heard no whistle from the "Port Philip" before your two blasts?—A. No.

Q. Nor any from her after?—A. Yes; at the instant we blew the two, about simultaneously with the last blast of our two-blast signal, he blew one.

Q. When you blew your two blasts—you ordered the two blasts blown, you did not blow it yourself?—A. That I cannot state; whether I blew it myself or ordered somebody to blow it.

Q. As you blew the two, or ordered them blown, did you give any order to the wheelman?—A. I gave the order to the wheelsman to put his helm left; he did not understand——

Mr. BRADLEY. You mean rudder.

A (continued). Left rudder. He did not understand. The "Port Philip" blew one. It is a matter of a second, maybe less, because he had never executed that order, I reversed it to hard right rudder.

Q. That hard right rudder was after the one blast of the "Port Philip?"—A. Yes.

Q. After the one blast signal from the "Port Philip" did you blow any signals?—A. I replied to that one blast with one so when the "Port Philip" blew the one blast of course it meant to me he would proceed on his course across my bow. I knew he could not do it, or that I could not get across his bow if he continued as he was heading then, so at the same time that I blew him one blast
135 I reversed both engines full astern, and I depended on it that he would come full speed ahead and give me all the room possible to get under his stern, and I took a chance of fouling the vessel that was anchored to the south of him.

Q. Your rudder, you say, was put over hard right?—A. Hard right, yes.

Q. How long was it kept hard right?—A. Until after the collision took place.

Q. Up to the time of the collision how many points would you say that you swung to starboard with your hard right rudder?—A. Not much. From a point to 15 degrees.

By the COURT:

Q. You steer by degrees, not points, anyway?—A. Yes.

Q. How many degrees was it?—A. I would say 15.

By Mr. WYTHE:

Q. After you reversed your engines full speed did you make any other change in your engines before the collision?—A. A minute before the collision took place, about a minute, I stopped the port engine.

Q. What was the purpose of that?—A. To try to give the ship as much of a cant as possible and hit as much of a glancing blow as possible instead of a direct hit on collision.

Q. When you stopped your port engine you continued going full astern on the starboard engine?—A. We continued going full astern on the starboard engine.

136 By the COURT:

Q. That would throw your bow to starboard?—A. Yes, sir.

By Mr. WYTHE:

Q. After the whistle signals you have just spoken of, did you hear other signals from the "Port Philip"?—A. Very shortly after, I should say less than a minute, or maybe a minute, he blew three whistles.

Q. A minute after what?—A. After the one-blast signal. We replied to his one-blast signal with one, and after we replied to it he blew three.

Q. You are sure you heard three blasts blown?—A. I am sure I heard three blasts.

Q. What did three blasts indicate to you?—A. That she was going full speed astern.

Q. Was it before or after that three blasts that you stopped your port engine?—A. It was after.

By the COURT:

Q. What was the distance between you and the "Port Philip" when you stopped your engine?—A. I should say a ship's length and a half. It was about a minute before the collision took place.

Q. Were you in head movement when you came in contact?—A. Yes, sir.

By Mr. WYTHE:

Q. About how fast were you going when you struck?—A. She had very little momentum at the time we struck. I should say anywhere between one and two knots.

137 Q. That is the best estimate you can make?—A. That is the best I can make; yes.

Q. After striking the "Port Philip" what did you do?—A. I endeavored the best I could to keep the bow of the "Proteus" in the hole to check the inrush of water as much as possible.

Q. How long did you remain there in the hole of the "Port Philip?"—A. That I cannot say.

Q. Was it a matter of a few minutes or seconds or what?—A. No. It was minutes.

Q. You finally had to back away?—A. Yes, sir. The "Port Philip" was going ahead, started her engines ahead, and of course, going ahead with the current on the starboard bow, of course it slewed her right to the south, and of course the angle between the two ships was decreased. The "Port Philip" began to put her boats over-

board, and the men got into the boats, and I was afraid to crush the boats between the two ships.

Q. At the time you backed away, have you any idea how far your stern was from the nearest of the anchored vessels?—A. We were pretty close; I cannot say exactly what the distance may be, but the officer, Mr. Wallace, called to me to look out, that I would be getting across the anchor chain.

Q. That is when you were backing?—A. Backing from the "Port Philip."

Q. Did you look back there that time?—A. I did.

Q. What did you see when you looked back?—A. I could see we were very close.

By the COURT:

Q. Did you have a ship's length between you?—A. That
138 would be hard to judge. The "Proteus'" bridge was in the bow above the forecastle head. She was 522 feet long, and it was very difficult to observe a distance from the stern.

Q. You were far forward?—A. Yes; at least 450 from the stern.

By Mr. WYTHE:

Q. Did you, after backing out, remain in the vicinity to render assistance to the "Port Philip"?—A. I hailed the "Port Philip" several times if I could be of assistance, but got no reply, and in the meantime a number of small boats got around there, which was taking care of the "Port Philip's" crew.

Q. At the time of the collision, Captain, or about the time of the collision, did you direct any of your officers to take bearings?—A. While we still had the bow in the hole of the "Port Philip" I directed the navigating officer, and I believe the chief quartermaster assisted him, to take the bearings and check the position of the collision on the chart.

Q. So far as you know that was done?—A. It was done; yes, sir.

Q. Mr. Wallace was your navigating officer, wasn't he?—A. Yes.

Q. He has testified already in this case, and he gave the bearings at the time of the collision as Fort Wadsworth bearing NNW., and the brick building on Hoffman Island as WNW.?—A. Yes.

Q. I show you Exhibit No. 5 before the naval board of investigation—I show you a point on the chart marked "WW"; did you check up those bearings this morning in my office on that chart?—A. I did.

Q. Did you find them correct as I read them to you?—A. I found them correct.

139 Q. The point that you refer to now is marked "WW" with the letters "Coll."?—A. Yes; that is the point.

Q. And with a dot in the circle?—A. Yes.

Q. That represents the point of the collision, according to the bearings taken by Mr. Wallace?—A. Yes.

Mr. WYTHE. I offer the chart in evidence.

(Marked "Respondent's Exhibit H in evidence.")

Q. As you were coming up you passed some of these anchored vessels on your starboard side before the collision, didn't you?—A. Yes, sir.

Q. Can you give me any idea as to how far off they were on your starboard side?—A. About 250 feet.

Q. Now I show you a diagram which was marked "Exhibit 8" before the naval board of investigation, and ask you if that represents the position of the vessels before the collision?—A. This represents the position of the "Port Philip" and the "Proteus" about at the time when we sighted the "Port Philip" first.

Mr. WYTHE. I offer that in evidence.

(Marked "Repondent's Exhibit I in evidence.")

Q. I show you Exhibit 9 before the naval board of investigation and ask you what that represents?—A. That represents the "Port Philip" and the "Proteus" at the time of the collision.

Q. Do you know who prepared these diagrams?—A. I believe Mr. Brakke did.

Mr. WYTHE. I offer these in evidence.

140 (Marked "Respondent's Exhibit J in evidence.")

Q. Do those diagrams represent the situation as you saw it?—A. Yes, sir.

Q. At the time of the collision and just before the collision who was on the bridge?—A. I was on the bridge myself, Mr. Wallace, the navigating officer, was on the bridge, and Mr. Brakke was on the bridge.

Q. What was Mr. Brakke's position?—A. He was the senior watch officer. Senior watch officer and first lieutenant was his duty.

Q. Did you have any lookouts stationed on the vessel?—A. Yes, sir.

Q. Where were they posted?—A. One in the bow, one in the forward crow's nest, and one in the after crow's nest, and I suppose we had them on the sides of the ship, I am not positive of that, we carried about eight lookouts or ten lookouts those days.

Q. Do you know who it was who first saw the "Port Philip" coming out?—A. I think it was about instantaneous with the bridge and the lookout in the forecastle head and the crow's nest, but I do not know the names of those men.

Q. Did you get a report from the lookout?—A. Yes; we got a report from the lookout.

Q. When was that, before or after you blew the two whistles?—A. It was just about the time we blew the two whistles, I should say. I would not be so positive on that.

Q. At the time of the collision what speed would you say the "Port Philip" was making?—A. Well, she was coming out slowly——

Q. At the time of the collision?—A. At the time of the col-

141 lision I should say she was about dead in the water. She started her engines after the collision.

Cross-examination by Mr. BRADLEY:

Q. Captain Hansen, the last signal you mentioned just now was what?—A. The last signal I mentioned I believe was three whistles from the "Port Philip."

Q. Were there any other signals that you heard?—A. Yes, sir; shortly after, in fact, right after blowing the three whistles the "Port Philip" blew a number of short whistles known as the danger signal.

Q. How many?—A. I think, four; four or five.

Q. You testified before it was five. Are you willing to accept that?—A. I am willing to call it five again.

Q. Then were there any other signals blown by any other vessel?—A. We replied to the "Port Philip" after she blew the five whistles, we replied with three whistles we were going full astern.

Q. Then of all the signals, the last signal blown by any vessel was your signal of three blasts?—A. Yes, sir.

Q. I show you Government's Exhibit H, which was Exhibit 5 at the naval trial, and call your attention to the dot with the circle around it, marked W. That was put on there by you, was it not?—A. Yes.

Q. What does that represent?—A. Represents the position where the "Port Philip" sank.

Q. Of the wreck?—A. Yes.

Q. How did you arrive at that position; how did you get it?—A. With the sextant angles.

142 Q. You went down a few days after and carefully took sextant angles and located the position there?—A. Yes, sir.

Q. And you are satisfied that is correct within 25 or 30 feet?—A. Within 50 feet anyhow.

Q. That is the most?—A. Yes.

Q. Coming up you had already passed some anchored vessels?—A. Yes.

Q. And I think you said you passed them about 250 feet away?—A. Yes, sir.

Q. And they were anchored, were they not, so as not to swing into the fairway when they swung with the tide?—A. Yes.

Q. So if any of them were more than 250 feet long, and only anchored 250 feet from the edge of the fairway, they would have swung into the fairway on the swing of the tide, would they not?—A. Yes.

Q. Not to mention the length of their anchor cable?—A. Yes.

By the COURT:

Q. You have to allow some for the scope of the cable, don't you?—A. Yes.

By Mr. BRADLEY:

Q. So I think possibly you underestimated the distance you passed away from them; don't you think so?—A. Maybe by a few feet. We passed as close to them as you consider safe to pass an anchored vessel.

By the COURT:

Q. They were not anchored straight up and down, were they?—A. Not exactly.

143 Q. And you had to allow something to the scope of the anchor cable in addition to the length of the ship?—A. Yes.

By Mr. BRADLEY:

Q. Captain Hansen, Government's Exhibits I and J, which were naval Exhibits 8 and 9, respectively, were prepared by Mr. Brakke?—A. Yes, sir.

Q. At that time you also prepared a little diagram, didn't you?—A. I believe I did; yes, sir.

Q. That was done at that time at my request, wasn't it?—A. Yes, sir.

Q. I show you naval Exhibit 7, and ask you if that is the diagram you then prepared?—A. Yes; I think it is.

Mr. BRADLEY. I offer it in evidence.

(Marked "Libelant's Exhibit 14 in evidence.")

Q. That diagram now marked "Libelant's Exhibit 14," has two parallel lines drawn on it, and two vessels anchored in line?—A. Yes, sir.

Q. Those are heading to the northward, are they not?—A. Yes.

Q. And the two anchored in line are intended to indicate the two the "Port Philip" came between?—A. Yes.

Q. Then there is a ship marked "P" as the position of the "Proteus" when you first sighted the "Port Philip"?—A. Yes.

Q. And intended to be about four of your own ship lengths away?—A. Yes, sir.

Q. There is another position marked "PP," and that is

144 intended to represent the position of the "Port Philip" when you first sighted her?—A. Yes, sir.

Q. Then there is another boat marked "P2," and that is supposed to be your boat at the instant of collision?—A. Yes.

Q. Then there is "PP2" in a more or less dotted line, which indicates the position of the "Port Philip" at the moment of collision, is that right?—A. Yes.

Q. Captain Hansen, all your officers were Naval Reserve men?—A. Yes.

Q. There was not any officer of the regular Navy on your boat?—A. No.

By the COURT:

Q. What were you, Naval Reserve or Auxiliary Naval Reserve?—A. Naval Reserve.

By Mr. BRADLEY:

Q. How did the "Proteus" answer her helm?—A. I should say she steered normally. Of course, a deep loaded vessel would not be so quick on the helm.

Q. Had you had to have any alteration made in the rudder?—A. No, sir; there had not been any alteration made to the rudder—I beg your pardon—yes, there had. There had been alterations made to the rudder.

Q. You recall at the naval trial you were asked about that?—A. Yes.

Q. "Q. (By the Court.) Page 144, What sort of steering gear have you got?—A. Steam. Q. Is the 'Proteus' very quick to obey her helm?—A. Not very quick. We had to have an extension
145 part put on the rudder because it did not steer at all hardly." Is that correct?—A. That is correct. We had an extension part put on, but I did not recollect at the time whether that was before or after.

By the COURT:

Q. Intended to make her answer quicker?—A. In case one engine broke down she would not steer at all. She was going around in a circle. I believe we had 24 inches put on the rudder, as a maximum, before we went on convoy work.

By Mr. BRADLEY:

Q. After you left Ambrose Channel, I understand there were vessels anchored on your starboard hand all the way to Fort Lafayette?—A. Yes.

Q. You were going full speed, however, until you reversed?—A. We were not going full speed. We were making the revolutions for what we call cruising speed, 12½ knots, with a 2½ knot tide.

Q. At any rate, you were going 10 knots?—A. Yes.

By the COURT:

Q. Over the ground?—A. Over the ground.

By Mr. BRADLEY:

Q. 12½ through the water?—A. Yes.

Q. I will ask you a few questions about your speed later, but I will defer those for the moment. On the way up the tide was setting ebb?—A. Yes.

146 Q. That would have a tendency to sag you down on the buoys on your starboard hand, would it not?—A. In certain parts of the channel it would.

Q. At any rate, after you made the turn and got into the last leg it would have that effect, would it not?—A. Yes, I would say slightly.

Q. So that it would be necessary, in order to avoid that sag, to carry a slight starboard helm, some starboard helm, to counteract it, would it not?—A. At times you would have to edge away and watch you did not get too close to the buoys.

By the COURT:

Q. How did the tide set after you made your turn?—A. The tide was running ebb. I should say it was setting there on a slight angle to the eastward.

Q. To the east and south?—A. Yes.

By Mr. BRADLEY:

Q. That agrees with all the information I get on the subject. Now, how long after the collision did you serve on the "Proteus"?—A. A year and a half, about.

Q. After the collision do you know what became of the original rough logs, both deck and engine room?—A. They were kept in the ship as long as I was there. They were never turned in to the bureau except when the ship goes out of commission.

Q. Then when you left the ship—I do not refer to the official log or the smooth log, but the original entries in the deck and engine room rough log.—A. I understand.

Q. They were still on the ship?—A. They were still there.

147 Q. Did you see them there yourself?—A. I would not attempt to make a statement when was the last time I saw them. The engineer's was only a sheet, a log sheet.

Q. It was on a printed form, however?—A. Yes, it was on a printed form, and that was kept, of course, in the chief engineer's office, and the navigating officer generally took care of all the old logbooks.

Q. What I want to get at is, they were both produced at the naval trial?—A. Yes, sir.

Q. You remember that?—A. I remember the deck log. I do not remember the chief engineer's log sheet.

Q. You were there?—A. I was there.

Q. If I told you the record discloses it was there, will you take my word for it?—A. Yes, sir; I will.

Q. After that do you know what became of them, of your own knowledge?—A. No, sir; I do not.

Q. In the ordinary course they ought to go back on the ship?—A. They did go back on the ship.

Q. Do you know that?—A. I know that.

Q. Did you see them on the ship?—A. I saw the deck log. As far as the engineer's sheet, that never was in my possession.

Q. I do not mean what ought to have been done in the usual routine. I mean what you can tell us of your own personal knowledge. Did you see the deck log back on the ship?—A. I did.

Q. Did you see the engineer's rough log back on the ship?—A. That I will not say.

Q. You do not remember?—A. No, sir.

Mr. BRADLEY. I call for the production of both rough logs.

148 Mr. WYTHE. We have not been able to obtain them. Mr. Bradley demanded them. He got an order from your home to the Secretary of the Navy, and the Secretary of the Navy has not produced them, and I have a letter from the Attorney General's office enclosing copies of letters from the Navy Department, which I think explain the inability of the Navy Department to find or obtain and forward them. I think under the circumstances, the demand having been made, I might offer these in evidence and make them a part of the record if Mr. Bradley has no objection.

Mr. BRADLEY. I suppose I ought to object, but I do not object, and I want to say on the record anything I say about these logs and their nonproduction does not apply to Mr. Wythe, because I am convinced he has made every effort he can to produce them.

The COURT. I will take them by way of explanation of why you do not produce them.

(Marked "Respondent's Exhibit K in evidence.")

Mr. BRADLEY. I offer in evidence notice to produce these documents, among others, served on the United States attorney May 4th last.

(Marked "Libelant's Exhibit 15 in evidence.")

Mr. WYTHE. I have the smooth logbooks which I have obtained, if you want them, Mr. Bradley.

Mr. BRADLEY. I am not interested in them, Mr. Wythe.

149 Q. Captain Hansen, at what minute and hour did this collision occur?—A. According to the time on board the "Proteus" it occured at 10.13.

Mr. BRADLEY. May I have Mr. Wallace's deposition?

(Deposition produced.)

Q. Captain Hansen, I show you what purports to be a copy of the deck log of the "Proteus," certified by the Acting Chief of the Bureau of Navigation, which was marked in evidence as "United States Exhibit 2" on the deposition of Mr. Wallace, and will ask you to tell me what time the collision appears to have occurred, according to that certified copy?—A. 10.12 on that copy.

Mr. BRADLEY. May I have a copy of the log that was put in evidence on the naval trial?

(Produced.)

Q. I show you Naval Exhibit 6, which also purports to be a copy of the same deck log, certified to be a copy by Mr. Wallace; on that the collision is stated to have occurred at 10.13, as you said.—A. Yes.

Q. And it was refreshing your recollection from this document that caused you to say the collision occurred at 10.13?—A. No, sir; it was not. I had a copy of my original report to the Navy Department.

Q. And it was 10.13 on that?—A. And it was 10.13 on that.

Q. But one or the other of these documents is incorrect?—A. Sir?

150 Q. But one or the other of these certified documents is incorrect?—A. One of them must be incorrect; yes, sir.

Mr. BRADLEY. I ask this be marked for identification.

(Marked "Libellant's Exhibit 16 for identification.")

Mr. BRADLEY. I want to correct on the record a statement I made. It is not certified to be a copy, but it is signed. This is an abstract from the deck log signed by Mr. Wallace, and not a certified copy.

Q. Relatively speaking, how high is the bridge of the "Proteus" compared with the usual vessel? Is it abnormally low or abnormally high?—A. I would say it was about normal for a vessel of her size.

Q. Mr. Wallace said she had a very high bridge. Would you concur in that statement?—A. No; I would not call it very high.

Q. How high was it?—A. I could not make a positive statement just to the height of it, but I should say that a loaded ship that her bridge—I mean to the height of my eye, was somewhere near 45 feet.

Q. At the naval trial I think you said 48.

By the COURT:

Q. From the water?—A. From the water.

By Mr. BRADLEY:

Q. There is not much difference, but do you accept your former testimony?—A. My memory was more correct then.

151 Q. How high was the man in the forward crow's nest?—A. I can only guess at that. Maybe 20 feet higher.

Q. Only 68 feet above the water?—A. Yes, sir. The "Proteus" did not have a mast. Her crow's nest was on top of the cooling tower.

Q. At any rate, you think 68 feet from the water to the eye of the man in the crow's nest?—A. I am guessing.

Q. If you are able between now and the time the trial closes to get accurate data on that, will you give it to me, please?—A. I will if I am able to. I do not know how I can. I do not even know where the "Proteus" is.

Q. There may be records you have access to.—A. They are in the Norfolk Navy Yard.

Q. There may be other records you can look up around the lunch hour, and if you could do so, I will be obliged.—A. I will.

Q. Did any one report the "Port Philip" to you before you saw her yourself?—A. The lookout reported the "Port Philip," but I could not say if that was before or after or simultaneously when I saw her myself.

Q. May I refresh your recollection by your evidence given at the naval court, page 134:

"Q. You did not see the 'Port Philip' until she came around on the starboard helm and came out into the channel?—A. No, sir.

"Q. Nor did anyone on your ship see her?—A. No, sir.

"Q. She was not reported to you?—A. No, sir."

Q. Refreshing your recollection by that testimony, do you concur in the testimony you gave at that time?—A. I will; yes, sir.

Q. The entry in both copies of the deck log, Wallace Exhibit
152 2 and libelant's Exhibit 16 for identification, states that at 10.09—it reads as follows: "Saw steamer 'Port Phillip,' English, come around stern of American steamer 'Cape Romaine'; could not see steamer 'Port Phillip' from U. S. S. 'Proteus' until she was well in the channel, as there was a steamer anchored just astern of the 'Cape Romaine,' and steamer 'Port Phillip' came from between stern of 'Cape Romaine' and steamer laying astern of her." Do you concur in the statement in the log that you could not see the "Port Phillip" until she was well in the channel?—A. No, sir; I do not concur in that.

Q. Then that is another respect in which we will have to differ from the log?—A. Yes.

Q. You, of course, signed the log, the original log?—A. Yes.

Q. And if this is a copy of it, you must have approved it when you signed it, I assume?—A. Well, I must, but I neglected to read it carefully.

Q. I know the master of a ship has all sins laid at his door and has to rely on his subordinates a great deal, but at any rate, you think the log in that respect is not correct?—A. It is not worded correctly. "Well in the channel," there can be given a lot of scope to that.

Q. That is not a happy way of putting what you meant is it?—A. No; that is not putting it correctly.

Q. So the fact is that it was not until you were four ship lengths away that you saw the "Port Philip" and that then, according to your log, she was well in the channel, but according to your evidence, she had come out so far as her forecastle?—A. Yes, sir.

Q. At that time what was her heading in reference to the vessel to the southward of her at anchor?—A. Apparently about right angles.

153 Q. Then for some time prior to that she must have been on a course at right angles and gradually diverging from right angles to that vessel at the southward of her at anchor?—A. I do not exactly understand that question.

Q. If when you saw her she was coming out between the two vessels and was at right angles to the vessel at the southward——A. Approximately right angles to the channel——

Q. Approximately, she must have been for some time before that on a course similar to the one she was on when you saw her, must she not?—A. The tide was running ebb. She must have at least had room enough to get straightened.

Q. I show you photograph, libelant's Exhibit 8, that is an enlargement of a photograph taken from your vessel—a snapshot. That shows that she had two masts and a funnel and the usual superstructure, doesn't it?—A. Yes.

Q. When she was on that course that you just alluded to, wouldn't it have been possible for some one of the many lookouts on your vessel to have seen her?—A. We were moving——

Q. I asked you, captain, if it would not be possible?—A. It would be possible to see her.

Q. Then the statement in the log that you could not see the "Port Philip" is another inaccuracy, isn't it?—A. At the time——

Q. I am asking you if the statement in the log that you could not see her until she came out is inaccurate?

Mr. WYTHE. Is that statement in the log?

Mr. BRADLEY. Yes; I will read it: "Could not see steamer 'Port Philip' from U.S.S. 'Proteus' till she was well in the channel."

154 Q. Is that a happy way of expressing what you think were the facts?—A. The view of the "Port Philip" was obstructed by the anchored vessel.

Q. I asked you a little while ago, captain, if it would be possible to see here and you said it was, and now I ask you if the statement in the log that you could not see her is an apt expression to state the facts you would like to convey?—A. From our point of view, from the bridge at that time; yes.

By the COURT:

Q. Assuming you could not see her from the bridge, couldn't the lookout in the crow's nest forward have seen it?—A. He could have seen a ship, but we were moving at 10 knots. There was a great number of ships anchored. The "Port Philip" was moving, I do not know how fast. We were closing and opening the angles between the ships anchored there rapidly, they were close, and it would be difficult, in fact no lookout man, or at least very few—there may be some—have intelligence enough to see if she was moving.

By Mr. BRADLEY:

Q. If a lookout man saw a vessel at right angles to the tide, or approximately right angles, and he were an intelligent lookout, would that convey anything to his mind?—A. I do not know.

Q. If you were a lookout and you saw a vessel in the position of the "Port Philip," at right angles, or approximately crossing the tide, lying across the tide, what would you think?—A. If I, with my present experience, was the lookout man, I would know she must be under way.

155 Q. But if the lookout man happened to be a man who had been in the Navy and at sea only since the preceding February, about nine months, and who prior to that time had been a teamster, it might very well be that he would make a mistake, might it not?—A. That I could not dispute. He might make a mistake; yes.

Q. Now, Captain, I suppose we are agreed two blasts mean I am directing my course to port?—A. Yes.

Q. Did you give the order left rudder?—A. I gave the order, but it was never executed.

Q. I will allow you, Captain, to explain all these things, and Mr. Wythe will undoubtedly, too, so won't you please answer my question? You did not mention that order at the navy trial, did you, Captain?—A. I believe I did.

Q. I wish Mr. Wythe or you would show me where you did. It is too long to read it all, but I can not find it. Will you take my word for the fact you did not, subject to correction when you examine it after?—A. I will.

Q. It is not mentioned in your log, is it?—A. No; it would not be mentioned in the log.

Q. The order right rudder is mentioned?—A. The order right rudder was executed. The left was never executed.

Q. To your knowledge it was never executed?—A. My knowledge is positive.

Q. Do you know the man at the wheel says he partially executed it?—A. No; I do not.

Q. He does.—A. To what extent did he mean partially?

Q. He had it over to 25. He said 30 was hard. So if he had executed it to that extent it was without your knowledge?—A. Yes; it was without my knowledge.

156 Q. If the "Proteus" started to swing under either helm from a position exactly stemming the tide, the tide would help her to swing, wouldn't it, at the start?—A. After she got some cant on her it would help some.

Q. After she got some cant on her and the helm was put over the other way, it would retard her swing back, wouldn't it?—A. Most undoubtedly.

Q. At the naval trial I think you said at the time of the collision you were of the opinion, you considered you had the right of way by virtue of having signaled first?—A. I think I did.

Q. You are not in doubt about it, are you, that you did so testify?—A. No; I am not in doubt.

Q. That is what you considered at the time?—A. Yes, sir.

Q. Do you recall asking Mr. Wallace on the bridge with you, "What is he trying to do?" and Mr. Wallace replying, "I don't know, she looks like she was going to cross our bow," and then your replying, "Give her two"; do you remember that conversation?—A. I do not remember exactly that conversation, but I do remember saying——

Q. Something like it?—A. "What is she trying to do?" In fact, I added something to it.

The COURT. We will assume that.

Q. Now, Captain, this morning Mr. Wythe showed you these two drawings, 8 and 9 naval exhibits, being I and J, respondent's exhibits, and you said that Exhibit I represented the position when you first sighted the vessel and J the position at the moment of collision?—A. Yes, sir.

Q. Now, they hardly agree with the drawing you yourself
157 made?—A. No, sir; they do not, and I do not hesitate to say this is the most accurate diagram [indicating].

Q. Then the diagram you made at the naval trial, which is now libellant's Exhibit 14, that was made by you a week or so after the collision, was it not?—A. Well, yes. I could not remember. We were a long time on it. It might have been a week, and it might be less.

The COURT. What is Exhibit 14 compared with?

Mr. BRADLEY. Exhibit 14 compared with naval Exhibits 8 and 9, respondent's Exhibits I and J. Captain Hansen now states that the one prepared by Mr. Brakke is more accurate than the one prepared by him.

Q. This one you prepared was prepared a week or so after the collision?—A. It was after; I could not say. I will take your word for it.

Q. You know it occurred right after the collision?—A. I will take your word for it.

Q. At that time you were convinced that it was a correct representation, though not drawn to scale, of what had occurred?—A. I think I explained——

Q. Weren't you trying to make it as accurate as you could?—A. Yes; a poor draftsman.

Q. What do you think is more likely to be correct, your recollection a week after or your recollection six and a half years after?—A. It is not my recollection that is at fault. It is my draftsmanship.

158 Q. I remember going over this carefully with you at that time and asking you to make it as correct as you could, and I will read the questions to you in a moment.—A. I remember.

Q. What has happened in the interval to make you feel Mr. Brakke's drawing is better than yours?—A. I do not know that anything has happened in the interval. I was under close fire and under pressure there, and I do not know that I could be expected to make an accurate drawing.

Q. Haven't you talked this drawing over with anyone since then?—A. No, sir; I have not. That is, until I came to Mr. Wythe's office and saw them the other day. I never saw Mr. Brakke for years since.

Q. I know that. I suppose you and Mr. Wythe did discuss this drawing you made?—A. I do not know that Mr. Wythe discussed it. I looked at it, and Mr. Brakke's drawing is the more correct one. I don't remember that Mr. Wythe said anything about it.

Q. I am sure whatever Mr. Wythe did say was perfectly proper, Captain Hansen?—A. I do not doubt that at all.

Q. Now, when you prepared that diagram had you in mind in locating the position of the collision the bearings on Fort Wadsworth and on Hoffman Island that Lieutenant Wallace made?—A. Yes, sir.

Q. And those bearings show the collision to have occurred inside the line of anchorage, do they not?—A. Just about on the line of the buoys.

Q. I think later on when we come to plot it on the chart it is inside. However, call it on the line for the moment.—A. Yes.

159 Q. In putting the point of collision on this diagram you drew just inside the line as you have, and on a line drawn from the port sides of the two boats at anchor, you had in mind when you did that the bearings Lieutenant Wallace made?—A. Yes.

Q. So that if those bearings should turn out to be inaccurate, or if any doubt should be cast upon their accuracy, it would also affect the data you used in preparing this diagram?—A. Yes; that is undeniable.

Q. Now, this diagram shows your vessel at the point marked P, then 2,000 feet from the "Port Philip" at the point marked PP; how long a time elapsed between the time you were at P and the collision?—A. Three minutes, as the time was recorded.

Q. I think perhaps you are in error about that, because the log says you sighted us at 10.09 and the collision occurred 10.13.—A. It says 10.10 in my record.

Q. Look at it. You reversed at 10.10, according to the log; four minutes.—A. That would be four minutes.

Q. According to the log it was 4 minutes?—A. Yes.

Q. So if it was in fact three minutes, that is another inaccuracy of the log?—A. There is a discrepancy in the log.

Mr. WYTHE. That is not the log. That is a transcript made by Mr. Wallace.

Mr. BRADLEY. I will show him the certified copy you put in evidence. It is the same thing.

Mr. WYTHE. You are contending they are not the same.

Mr. BRADLEY. That is true.

160 Q. I just showed you a copy of the log put in evidence at the naval trial, which is now libelant's Exhibit 16 for identification, and that shows your sighting the "Port Phillip" at 10.09, and the collision at 10.13. The certified copy put in evidence on Mr. Wallace's deposition shows you sighted the "Port Philip" the same time, 10.09, but the collision occurred at 10.12. I think that you before adopted the version shown in the copy put in evidence at the naval trial that the collision occurred at 10.13, and you said you got that also from your own records?—A. Yes.

Q. So if you sighted the "Port Philip" at 10.09, four minutes elapsed between then and the collision?—A. That would be four minutes.

Q. Then from the time you were running it took you four minutes to traverse the distance between P and the point of collision on this diagram, is that right?—A. Yes.

Q. According to both logs you reversed at 10.10?—A. Yes.

Q. So one of those minutes you were running full speed ahead?—A. There is a discrepancy of a minute.

Q. There is no discrepancy there. Both logs state you sighted the "Port Philip" at 10.09, and both state you reversed at 10.10, and in that minute you were running full ahead.—A. Yes.

Q. And you were running full ahead from the point shown as P on this piece of paper?—A. Yes.

Q. And at the time you were four minutes from the "Port Phillip" when you started, do you think the "Port Phillip" would only have gone ahead from the point "PP" to the point "PP2" in four minutes while you were running that distance?—A. I have no knowledge of how fast the "Port Philip" was going.

161 Q. I think you thought that the "Port Philip" stopped.—A. I certainly did think so when she gave three whistles; stopped and backed.

Q. Do you think she went ahead again before the collision?—A. I do not know that I ever thought about that.

Q. What do you think now?—A. I think at the time of the collision she was dead in the water.

Q. If the "Port Philip" did not in fact back her engines, but ran ahead from the point PP to the point of collision, under whatever speed she was going ahead at the time she came out between these

two ships, that diagram is impossible, isn't it?—A. I admitted that other one was more correct.

Q. That one is impossible, isn't it [showing witness a paper]?—A. Call it impossible.

Q. Let it go at that. Now, Captain, when you struck the "Port Philip" we have heard it had an effect of slewing the "Port Philip" around, the bow to port and the stern to starboard.—A. Yes, sir.

Q. That you agree to?—A. Yes.

Q. And you kept your nose in the hole, didn't you?—A. As long as I could.

Q. And consequently you moved with the "Port Philip"?—A. Yes; I tried to.

Q. And that had the effect of slewing your bow to port and your stern to starboard, didn't it?—A. Yes.

Q. So that after the collision, when the "Port Philip" was headed to the southward you were headed somewhat to the eastward?—A. Westward.

Q. Your heading was to the westward and your stern to the eastward?—A. Yes.

Q. So this diagram shows only the situation at the time of collision?—A. That is what it was intended for.

162 Mr. BRADLEY. I am referring to Exhibit 14, the one Captain Hansen drew.

Q. After the situation shown on that diagram, both vessels slewed around?—A. Both vessels slewed around; I could not say——

The COURT. The "Port Philip" went to the southward and you went to the westward?

The WITNESS. Yes, we went to the westward.

Q. And afterwards you had to back to get out of the hole, didn't you?—A. Yes.

Q. Do you know when Lieutenant Wallace took those bearings at the point of collision?—A. He took them at a time while we were still with the bow against the "Port Philip."

Q. He testified he took them one minute, one minute and a half, or two minutes after the collision. Did you know that?—A. No; I did not know that. I did not remember it, and I do not know either how long we remained with our bow against the "Port Philip."

Q. I show you the chart, respondent's Exhibit H, being Exhibit 5 at the naval trial, and I ask you to be good enough to let me know how much distance the "Port Philip" had to make good in a westerly direction from the point of collision as plotted by Lieutenant Wallace, and the wreck. I will give you dividers, and I wish you would scale it off as accurately as you can. Take your time. I want you to be as accurate as you can. I mean disregarding the flow of the tide.—A. Is that about it?

163 Q. That looks about it without actually laying the rulers on it. Let us see what it is.—A. 2,400 feet.

Mr. BRADLEY. 800 yards; 2,400 feet.

Q. Now, Captain, the evidence is that the "Port Philip's" engines were going ahead five minutes after the collision?—A. Yes, sir.

Q. I show you libellant's Exhibits 7 and 8, being enlargements of photographs of the "Port Philip" taken from your vessel, first showing the hole you made, just as you backed out apparently and, the second, the "Port Philip" when you were very close to her. I show you those so as to refresh your recollection as to the sinking condition of the "Port Philip." Now, Captain, will you figure out for me at what rate per hour the "Port Philip" would have to proceed through the water to make good that 2,400 feet of westerly direction from the time of the collision at 10.13 to the time your log states she sank, at 10.24, that is, eleven minutes—no—between the time of the collision and the sinking was 11 minutes, but during that time her engines were only going ahead five minutes. Will you tell me the rate of speed the "Port Philip" would have to be going to make good that 2,400 feet in a westerly direction in that five minutes?—A. May I ask Mr. Wythe to figure that?

Q. Suppose we figure it together. A boat going one knot an hour, that is 6,080 feet, will go 101 feet plus a minute. Do you get that?—A. Yes.

The COURT. $101\frac{1}{3}$.

Q. In five minutes, at one knot, she would go 505 feet plus?—A. Yes.

164 Q. And you divide 505 into 2,400, and you will get the rate of speed she must have been going at to get from the point where Mr. Wallace said the collision occurred to the point where we all admit the wreck was. Will you do that for me?

Mr. WYTHE. Is this merely for the purpose of arriving at figures?

Mr. BRADLEY. I do not care who does it. If you will accept my figures I will do it. They work out at $4\frac{3}{4}$ knots. Do you accept that? Do you work it out the same way, your honor?

The COURT. About $4\frac{3}{4}$.

Q. Do you think the "Port Philip" in the condition shown in those two photographs I showed, with her firemen out of the fireroom and her steam running back, could go $4\frac{3}{4}$ knots an hour?—A. There is no record how long after these photographs were taken.

Q. They were taken obviously when your boat was near her. You never went to the westward with your boat, did you, so they must be taken near the point of collision?—A. I do not know when they were taken. They were not taken for any official purpose. They were taken by a hospital boy and I did not know it.

Q. Perhaps it would be better if he had not taken them, but he did, and I do not care whether his purpose was official or not, here they are to show us what happened.—A. Yes.

Q. I will ask you if they concur with your recollection how quickly the "Port Philip" sank?—A. She did not settle so very fast. Eleven minutes is quite a time.

135 Q. Before she sank completely?—A. Before she sank.

Q. Completely?—A. Yes.

Q. But those photographs were taken from your vessel, and assume they were taken when the "Port Philip" was somewhere in the neighborhood of your vessel——A. Undoubtedly they were.

Q. In close proximity to your vessel, if you please, could the "Port Philip," in the condition shown in those photographs, have steamed from the point of collision in five minutes, at the rate of 4¾ knots?—A. Why, yes.

Q. You think she could?—A. Yes.

Q. Thinking as those show her, no one stoking the fires, everyone out of the engine room except the chief, steam running back, the stern under water, you believe she could go at the rate of 4¾ knots an hour?—A. I did not know about nobody in the stoke room.

Q. I told you those are the facts, and I ask you to assume them, and assuming them, do you still believe she could have done that?—A. Yes; I still believe it.

Q. Now, Captain, did you see at any time prior to the collision any evidence in the water at the stern of the "Port Philip" which would indicate to you her engines were working astern?—A. No, sir; I did not. I took her signals for what they were supposed to mean.

Q. As I understand, you heard her blow three and then five afterward?—A. Yes.

Q. Isn't it possible you mistook those eight signals for 3 and 5, instead of two alarms of 4 and 4?—A. No; it is possible they were blown incorrectly.

Q. It is not possible in the confusion you made that mistake?—A. No.

166 Q. One has to be very good to be infallible, Captain, you know. We all make mistakes.—A. Certain things we are sure of.

Q. Now, Captain, I would like to ask you a few questions about that chart. Both of the logs, both copies of the logs we have in court here, show that West Bank Lighthouse was abeam at 9.54 and Swinburne Lighthouse was abeam at 10.02. Will you, with the dividers, compute the distance between West Bank and Swinburne Island on respondent's Exhibit H? From West Bank to Swinburne. If you had her accurately abeam you could take the distance from each. At that time she must have been heading—you could not have West Bank abeam and not be in Ambrose?—A. No.

Q. Then you can safely take the distance between them for our purposes, can't you?

Mr. BRADLEY. I get the distance to be 3,400 yards.

Q. Do you agree?—A. I make it thirty-five.

Q. We won't quarrel about that. Will you tell me what length of time it took you to run from the time the West Bank was abeam until Swinburne Lighthouse was abeam—8 minutes, wasn't it? I says here "West Bank Lighthouse was abeam at 9.54 and Swinburne Lighthouse was abeam at 10.02; that is 8 minutes, isn't it"?—A. Yes.

Q. Will you tell me at what rate per hour you must have been going to have West Bank and Swinburne abeam at that time? I have computed that at 12.6 knots per hour. Will you accept that computation subject to correction if I am wrong? I mean the mathematics?—A. Yes.

167 Q. If I am wrong your friends at the table will check me. That would indicate your vessel passed between those two points, if the bearings are correct, at the rate of 12.6 knots over the ground?—A. Yes.

Q. If you add 2½ knots ebb tide to that, it has you going at 15 knots and over, doesn't it?—A. Yes.

Q. Could your boat make it?—A. No, sir.

Q. Then that is another point where the log is inaccurate, isn't it?—A. Yes.

Q. Did the same man who took the bearings on West Bank and Swinburne take the bearings of the point of collision?—A. I do not know who took the bearings at West Bank and Swinburne.

Q. Whose duty was it?—A. Most likely the navigating officer.

Q. It is Wallace's duty to take them, and he swore he took them.—A. I will take your word.

Q. His bearings at West Bank and Swinburne are inaccurate?—A. Either the time or the bearings.

Q. Is there any lighthouse on Swinburne Island?—A. No, sir.

Q. The log says Swinburne Lighthouse was abeam at 10.02?—A. It was a water tank.

Q. Ought not a naval officer on the "Proteus" to know a lighthouse from a water tank?—A. He ought to, if he looked. He was from the Pacific coast, and only came here lately. He was only a young man, and he might make a mistake like that.

Q. I wish you would look at the same copy of the log put in evidence on Mr. Wallace's deposition and tell me when Romer Light was abeam.—A. I do not see it here.

168 Q. Wasn't it the duty of the navigating officer Wallace to take bearings on prominent objects he passed on the way up?—A. No, sir; not navigating in a buoy channel in bright daylight.

Q. And Mr. Wallace's deposition reads: "Q. What was your duty on the bridge as navigating officer coming up Ambrose Channel?—A. Taking bearings on all headlands, buoys, and lights, and any object that was stationary." Who is correct, Mr. Wallace or yourself?—A. If they were required it would be his duty, but navigating in a buoy channel on a sunlight day

Q. I know in the merchant service we do not, but in the Navy we have more red tape than in the merchant service. Wasn't it the duty of the navigating officer to take bearings on prominent headlands, as he himself swore?—A. It was his duty if directed to do so by me

Q. Only so?—A. Only so.

Q. Then he took bearings on West Bank and Swinburne without direction?—A. Without direction from me.

Q. I would like you to compute for me how inaccurate those two bearings must be, and we will do it together, if you do not mind. Assume the place of collision as marked by yourself is correct. Now, what rate of speed do you admit you were making through the water—over the ground, I mean?—A. Over the ground, 10 knots. That is what I admit making, and that I think we correctly were making.

Q. Then in 8 minutes from 10.02 to 10.10—run back 8 minutes from the point of collision at the rate of 10 knots an hour, and tell me where it brings you?—A. How much did you say, 8 minutes?

Q. Eight minutes, at the rate of 10 knots an hour, from the point of collision.

(This took place at the judge's bench.)

169 Mr. BRADLEY. The answer is this: That runs back 8,100 feet.

Q. Will you mark the point with a circle and put the letter A over that?

(Witness does as requested.)

Q. In computing the distance backward, you have not allowed for 3 minutes from the time your engines were reversed from 10.10 to the collision?—A. No.

Q. So if you include that it will put you still further to the southward?—A. Yes.

Q. If you ran from 10.02 to the point of collision, and we will assume that to have taken place at 10.10, and not consider the time when your engines were reversed, or part of them reversed, it puts you at the point A at 10.02?—A. Yes.

Q. And that is time Mr. Wallace said he had Swinburne Lighthouse abeam?

Mr. WYTHE. I object; that is misstating the facts.

Mr. BRADLEY. It is not. He says in the log he had Swinburne Lighthouse at 10.02 and he swears to it in his deposition.

Mr. WYTHE. That does not count in reversing his engine.

Mr. BRADLEY. We will put that in.

Q. If at 10.02 the "Proteus" was at point A, which you marked on this chart, how did Swinburne Island bear from her? I do not mean by the compass, I mean by points on the bow approximately. That would be about 4 points on the port bow, wouldn't it?—A. Yes.

170 Q. Now, Captain, you knew Mr. Wallace, didn't you?—A. I knew him, of course.

Q. Did he strike you as a competent man when he served under you?—A. He was a young fellow of very little experience. I guess he was as competent as any man of his age.

Q. He had been to sea since 1869?—A. Yes, but he did not know anything about New York Harbor. He had not been here until he came on the "Proteus."

Q. It is not possible if he knew Swinburne Island when he saw it, he could call Swinburne Island abeam when it was 4 points on the port bow?—A. No.

Q. Isn't it possible he mistook West Bank for Swinburne and Romer for West Bank?—A. I could not find on that log any record of Romer.

Q. I couldn't, but it speaks of West Bank and Swinburne Lighthouse. We know there is no lighthouse on Swinburne, and there is a lighthouse on Romer?—A. That is possible.

Q. So perhaps he had Romer abeam at 9.54 and West Bank at 10.02?—A. Yes.

Q. Now, if he had West Bank abeam at 10.02 and Romer abeam at 9.54, your ship would have had to turn twice from the first leg into the second, and the second into the third of Ambrose, to get those two bearings accurately, isn't that so?—A. Yes.

Q. To have West Bank abeam you would have had to be in the last leg of Ambrose, would you not?—A. Yes.

Q. And to have Romer abeam you would have had to be in the first leg?—A. Yes.

Q. And those two turns would have undoubtedly slowed your speed, would they not?—A. Very slightly.

171 Q. But some?—A. It would be so slight it would not be hardly appreciable. It would not amount to more than a few feet.

Q. Let us suppose that in fact you had West Bank abeam at 10.02 instead of Swinburne——A. We are assuming that.

Q. We are assuming that; we are guessing that. The log as it stands is impossible, isn't it?—A. That don't check.

Q. So we will assume you had West Bank abeam at 10.02. Will you please plot forward at the rate of 10 knots an hour an 8-minute run?

Mr. WYTHE. Right here I would like to object to plotting something based on guesswork and an assumption without a basis for it. I can not see what it is leading to, and it is confusing to everybody concerned.

Mr. BRADLEY. I am trying to find out how the collision happened.

Mr. WYTHE. You can not by guessing. That is a matter for argument.

The COURT. I can figure it myself.

Mr. BRADLEY. I would like to ask some questions about it as we go along.

Mr. WYTHE. I must press the objection to basing questions on pure hypothesis.

The COURT. I will let him answer. If it does not figure it won't persuade me.

Mr. WYTHE. You must have a basis.

The COURT. Yes; but you have an impossible situation dealing with two lights. If you can show two lights on the course at an earlier point, I think for the purpose of harmonizing this he can ask it. I do not know that it will have much weight.

172 Mr. WYTHE. I am not satisfied that other situation is impossible.

The COURT. That is for argument. You can plot it and I will do my plotting.

(The witness complied with the request.)

Q. Will you please mark the point on the chart you arrived at with a circle and the letter B?

(Witness did as requested.)

The WITNESS. What is this point I am marking?

Q. We will find out in a minute. Now, Captain, how far is that point from the time when "West Bank" was assumed to be abeam at 10.02?—A. 2,800 yards—2,700 yards.

Q. How far is it from that point to the point of collision, referring to point B and the point of collision?—A. 1,400 yards.

Q. If you left "West Bank" abeam at 10.02 and ran to point B in 8 minutes at 10 knots, you still had how far to go to the point of collision?—A. 1,400 yards.

Q. Could you do that in three minutes with your engines astern, as you say two of them were?—A. (No answer.)

Mr. BRADLEY. That is 4,200 feet.

Q. Could you run that in three minutes with your engines reversed, two of them full speed astern?—A. (No answer.)

Q. I may tell you that would be 14 knots an hour. Could you do that with your engines astern? Could you go that rate with your engines astern two out of three minutes?—A. That is three minutes and three-quarters of a mile?

173 Q. Could you run two-thirds of a mile, approximately, in three minutes with your engines reversed, as you say, two of the three minutes?—A. (No answer.)

Q. Captain, it would be at the rate of 14 knots an hour.

By the COURT:

Q. Captain, you were going 6,080 feet in 6 minutes in round figures?—A. Yes.

Q. Could you do two-thirds of that at a reduced speed in three minutes?—A. No.

By Mr. BRADLEY:

Q. I am going to ask you one more question and then I am through. Mr. Wallace estimated your speed at 11 knots an hour over the ground on his sworn deposition taken in this case and now in evidence. Will you assume for me Mr. Wallace was right, and will you assume also that Mr. Wallace was wrong when he said he had Swanburne abeam at 10.02, and that he had "West Bank" abeam at 10.02?—A. I will assume Mr. Wallace is wrong.

Q. Will you also assume the collision occurred at 10.15?—A. Assuming.

Q. Will you——

Mr. WYTHE. He is assuming things on which there is no record.

The COURT. The evidence is it was 10.15.

Mr. WYTHE. I understood it was on their clock.

The COURT. He is going by their clock.

Mr. WYTHE. It is confusing to the witness.

174 The COURT. It may be, but we will try and get his mathematics correct.

Q. Assuming West Bank was abeam at 10.02, and the collision occurred at 10.15, that is a lapse of time of 13 minutes. Will you run forward from West Bank for 13 minutes at 11 knots and tell me where

it brings you? That brings you north of the place where the collision occurred, according to Mr. Wallace?—A. (No answer.)

Q. Will you mark that point with the letter C?—A. This does not seem to be the distance I had before.

Q. You can check it. Will you mark that point with a circle and the letter C outside of it?

(The witness did so.)

Q. Assume you had West Bank abeam at 10.02 and that you ran forward for 13 minutes at 11 knots, you would have arrived at the point marked C and a circle on this chart?—A. Yes; we are assuming.

Q. We are assuming all these facts.

Redirect examination by Mr. WYTHE:

Q. As you came up the channel did you look over to starboard toward the anchorage any time?—A. Yes, sir.

Q. Did you see any vessel there yourself that you could recognize as a moving vessel?—A. I did not, sir.

Q. Where you listening for whistle signals at that time?—A. Yes, sir; we always are, navigating in the harbor.

175 Q. Did you hear any whistle signals before your two blasts from anybody?—A. No, sir.

Q. In your experience as a harbor pilot, if a vessel was in the act of coming out of the anchorage, would you expect her to sound any whistle signals or not?—A. I would expect her to sound a whistle signal, yes.

The COURT. I did not get the answer.

The WITNESS. I would expect her to sound a long whistle.

The COURT. The same as a sound coming out of a slip?

The WITNESS. Yes.

By Mr. WYTHE:

Q. Now you have testified on cross-examination that you previously testified that you blew your two blasts to her first before she blew to you, and for that reason you considered you had the right of way?—A. Yes.

Q. Under what rule would that be?—A. By virtue of signaling first, by virtue of blowing the first signal.

Q. Do you know what is known as the starboard hand rule?—A. Yes.

Q. Did you consider that rule applied?—A. It could not apply because I did not have room to get around his stern.

By the COURT:

Q. As you continued observing the "Port Phillip" as she was coming was she maintaining the course across the channel or was her

176 head dropping down, making the swing?—A. Apparently as long as I observed her, in fact, from the time I saw her until the collision, she was holding closely to the westerly course.

Q. You did not observe the swing then?—A. No; I did not observe it. It was not sufficient to be noticeable on the bridge of the other ship.

Q. Was the "Port Philip" clear of the vessel to the south that she was passing in coming out—she came out between a vessel anchored to the northward and one to the southward?—A. Yes.

Q. Was she clear of the vessel to the south as she came out?—A. Not when we sighted her.

Q. When you gave the two-whistle signals was she clear?—A. The two whistles was given about instantly on sighting her.

Q. How did you expect her to make the manoeuvre to allow you to cross her bow without dropping down on the vessel anchored to the southward?—A. He could have headed up more to the northward or backed out of line of the two vessels.

Q. Then you expected him to give a port helm and go to the northward?—A. Yes, sir; either that or back and try to maintain as far as possible his position.

Q. If he backed, wouldn't the tide throw him down on the vessel to the southward?—A. It possibly would have pulled him that way.

Q. He had a 2½ knot tide forcing on his bow?—A. Yes.

Q. And if he had gone astern the effect of the tide would be to throw him down on the vessel anchored to the southward, wouldn't it?—A. It would, yes.

(At 1 p. m. a recess was taken until 2 p. m.).

177 (2 p. m., met pursuant to adjournment; present as before.)

Mr. Bradley. I offer in evidence libellant's Exhibit 16 for identification; that is naval Exhibit 6, copy of the log.

(Marked in evidence "Libellant's Exhibit 16.")

Niels Soren Hansen, recalled:

By the Court:

Q. May I ask a question, Captain? About what speed were you making after you say you stopped the port engine?—A. Say, 2 to 2½—now I am just guessing at that.

Q. Before that, from the time you say you slowed down up to that time, what were you making?—A. I never slowed down. I was full speed ahead to full speed astern.

Q. You went from full speed ahead to full speed astern?—A. Yes.

Q. How long were you going astern before you stopped your port engine?—A. Two minutes.

Q. You did not lose your head movement?—A. No, sir; she never lost her head movement.

Q. Could you make any estimate of what speed you were making on the average from the time you reversed up to the time you came in contact with the "Port Philip"?—A. The average must have been 5 or 6. Of course I am just guessing.

Q. Yes; that is an estimate.—A. All the naval ships have a speed curve. To pull your speed curve it was computed at 27½-foot

178 draft. We were on 30, according to the speed curve, and the revolutions we were making, we were making 12½ knots, and the current would make it 10 knots over the bottom

By Mr. WYTHE:

Q. What is your estimate of the distance between the two vessels between which the "Port Philip" came out, the two anchored vessels?—A. 900 to 1,000.

Q. Feet?—A. Feet.

By the COURT:

Q. That is from the stem of the southern vessel to the stern of the northern vessel?—A. Yes.

By Mr. WYTHE:

Q. As you saw the "Port Philip" heading out would you say she was closer to the northerly one or the southerly one of these two?—A. She was closest to the northern one.

Mr. WYTHE: If the court please, I have in court Mr. Brakke, who was also on the bridge of the "Proteus," but he cannot testify to anything that has not already gone on record, and his evidence will only be cumulative; I do not care to——

Mr. BRADLEY. I won't comment on his absence if you do not put him on.

The COURT. There will be no comment made if you do not call him.

Mr. BRADLEY. Not on that point.

(Respondent rests.)

(Libellant rests.)

179 (It was agreed counsel could arrange with each other a date for submission of briefs.)

Mr. BRADLEY. What about exhibits?

The COURT. I think you had better take your exhibits with you.

Mr. BRADLEY. How about exhibits that are depositions? Would your honor want to read them now?

The COURT. No; I will do it all at once.

180 *Libellant's Exhibit 1—Testimony of Leinster*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America as owner of the steam collier "Proteus" and cross libel

It is stipulated that the annexed testimony of Thomas A. Leinster at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by said Thomas A. Leinster on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or

in part by either party on the trial of the said libel and cross libel and that all objections as to materiality, relevancy, and competency of the testimony are reserved.

Dated, New York, February 25, 1925.

LORD, DAY & LORD,
Proctors for Libellant.

RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross-Libellant.

181 SECOND DAY.

NAVY YARD, NEW YORK, *Wednesday, Oct. 23, 1918.*

The court met at 10 a. m.

Present: All the members and the parties to the inquiry.

A witness called by the judge advocate entered and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, occupation, and residence?—A. Thomas A. Leinster, Elvin Lodge, Otterburn Terrace, Jesmond, Newcastle-upon-the-Tyne, England.

Q. 2. Your occupation?—A. Marine engineer.

Q. 3. On what ship?—A. "Port Philip."

Q. 4. Were you on the "Port Philip" on Oct. 16, 1918?—A. Yes, sir.

Q. 5. How long have you been on the "Port Philip"?—A. 4½ years.

Q. 6. Are you a licensed chief?—A. Yes, sir.

Q. 7. In charge of the engine room department at that time?—A. Yes, sir.

Q. 8. Were you on duty on Oct. 16, 1918?—A. I was on the engine room platform. The chief engineer is not on duty at all. I was on the starting platform, on the bridge.

Q. 9. What time did you get under way?—A. About 9.57, to be accurate.

182 Q. 10. From the time you got under way, describe the conditions that existed aboard your ship, with reference to engine room signals.—A. First of all, 9.48 we had stand by; about 9.57 we had half speed ahead; about 10.07, slow ahead; 10.10 full ahead, and at 10.13, and extra full ahead. When we want an extra special spurt we have our own signal, a double ring on the telegraph. That was given, and all power was given on the engine at 10.13. Of course, these are approximate times.

Q. 11. At 10.07, the time you received the signal for slow ahead, could you tell what way she was making through the water?—A. No, sir.

Q. 12. At 10.13, extra full speed ahead was given. Thereafter, did you receive a shock on board the boat?—A. Yes, sir.

Q. 13. About what time?—A. About 10.15.

Q. 14. At any time did you receive a signal for full speed astern?—A. No, sir.

Q. 15. You didn't hear the whistles between the "Port Philip" and the "Proteus"?—A. No. I did hear some whistles, but didn't take much notice.

Q. 16. You simply heard them in your position, but didn't know what the whistles were, nor anything else?—A. Exactly.

Examined by counsel for Cunard S. S. Co., interested parties:

Q. 17. Describe the concussion which you said you felt at 10.15.—A. Of course we had no warning about anything coming and this bump came and the ship simply staggered, heeled over to starboard, and came back again. It was a fairly decent bump. Of course we knew something serious had happened.

Q. 18. After that, did you receive any further orders from the bridge?—A. Telegraph rang to stop immediately the concussion took place.

183 Q. 19. Was that order carried out?—A. Yes, sir.

Q. 20. Were these other orders that you have mentioned carried out?—A. All carried out implicitly.

Q. 21. Did you get any order from the bridge after you got the order to stop?—A. Yes.

Q. 22. What was that order, and about when did it come.—A. About 10.18, one signal for full speed ahead, and we executed it.

Q. 23. Then did you get any order?—A. 10.23, to stop.

Q. 24. Was that executed?—A. That was executed.

Q. 25. Had you, prior to getting under way, compared the clock in the engine room with the clock on the bridge?—A. Yes; that is always done.

Q. 26. Had you so done in this case?—A. Yes, sir.

Q. 27. What was the result of that comparison?—A. The clocks were set right to agree.

Q. 28. When you got up on deck from the engine room, what did you find the condition of the ship to be?—A. I got up at 10.23, and the water was very nearly up to the engine room, along the deck, and about 6 inches from going over the step of the engine room casing. By the time I got on the rail, the water was down the engine room.

Q. 29. How did you get clear of your ship?—A. The life boat was off a bit.

Q. 30. Which lifeboat?—A. Starboard lifeboat.

Q. 31. Did you get into it?—A. I jumped for it, and got hold of lifeboat.

Q. 32. Did you notice any confusion among the crew?—A. Not in our lifeboat; no, sir. We had great difficulty in getting off. There was quite a vortex.

Q. 33. By what boat was the lifeboat you were in picked up.—A. We rowed over to the "Hudson."

Q. 34. Coast Guard Cutter "Hudson"?—A. Yes.

184 Q. 35. You are a single screw steamship?—A. Yes, sir.

Q. 36. What is your indicated horsepower?—A. 2,500.

Q. 37. What is the speed of your vessel, full speed, loaded, under sea conditions?—A. 10½ knots.

Q. 38. How many revolutions does she make at full speed?—A. Approximately 64.

Q. 39. At half speed, under the same conditions what will she make?—A. About 40 revolutions.

Q. 40. And what speed?—A. About 6 knots.

Q. 41. At slow speed, what will she make?—A. Two, two and a half, or three knots.

Q. 42. What other engineers did you have in the engine room at the time?—A. We had four engineers down below; chief, second, third, and fourth.

Q. 43. What were the names of the second, third, and fourth?—A. Mr. Bentley, second engineer; Mr. S. Brown, third engineer; Mr. Aitken, fourth engineer.

Q. 44. What stations were they at, respectively?—A. Fourth engineer stands at the telegraph, and replies to all orders and puts down the time; second engineer stands by the main engine; third engineer is a spare hand.

Q. 45. Were they at the stations mentioned by you at the time of the collision?—A. All at their posts.

Q. 46. Were any of the engine room scrap logs, or other records, saved?—A. No, sir.

Q. 47. Where was the scrap log?—A. It was on the desk.

Q. 48. Who was near that?—A. Fourth engineer, Mr. Aitkin.

Q. 49. That was not saved, and is presumably there now, in the ship?—A. Yes, sir.

185 Examined by Lieut. Commander N. S. Hansen, U. S. N. R. F., an interested party:

Q. 50. Just about the time of the collision, when the captain left the bridge and went down to see you, what did he go down to see you about?—A. At what time?

Q. 51. Just about the time of the collision, or, possibly, after.—A. Was it before, or after?

Q. 52. It may have been right after.—A. It was not before the collision; it was after she struck.

Examined by the Court:

Q. 53. Did the captain come to you before, or after the collision?—A. Immediately after I was on the deck.

Q. 54. Did he come to you or did you come to him?—A. I ran to him.

Q. 55. Where did you meet?—A. Half way on the deck.

Q. 56. What did he say to you when he came to you?—A. "Drive her full ahead; we are going to beach her."

Q. 57. Was that before the collision?—A. After the collision.

Reexamined by the JUDGE ADVOCATE:

Q. 58. At the time you came on deck, and the captain said, "Drive her full ahead; we are going to beach her," how many minutes elapsed before you abandoned her?—A. About 10.18, when I saw the engine full ahead, and I was down there fully five minutes, and it rang "Stop." I stopped the engines and came up. I am speaking correctly, because I was the only man in the engine room at the
186 time. I came up and she was pretty well down then. It was about five minutes; 10.23.

Reexamined by the COURT.

Q. 59. Before leaving the engine room, what did you do to make the boilers safe against an explosion?—A. The fan was stopped, and the air checks were shut, and the steam well back at the time.

Q. 60. Did you do anything to the safety valve?—A. The safety valve was not touched. When I came up the first time after she struck, and when I went down again to give her the final order, naturally the steam was going back when I was driving full ahead. There were no men in attendance. The fan was then stopped, and she was driving five minutes; by that time the steam was well back.

Q. 61. Do you know that whenever an accident of this kind happens, it is customary for the engine room force to make the boilers safe?—A. Yes, sir.

Q. 62. Do you consider that you made the boilers safe when you did nothing to the safety valve?—A. I considered they were, without regard to the safety valve.

Reexamined by the JUDGE ADVOCATE:

Q. 63. Was there any explosion at all that you noticed?—A. I noticed air was blowing in the fore end of the ship, but not steam; after I left the ship.

Reexamined by the COURT:

Q. 64. You testified you didn't save any log books. Were the times you just gave from memory, or from having refreshed your memory from another record?—A. Mainly from the record.
187 Q. 65. Did you refresh your memory from the third officer's record?—A. Yes, sir; and confirmed it by consulting the fourth engineer.

Q. 66. What is the difference between half speed and slow ahead?—A. Slow ahead is just turning over the engines.

Reexamined by the JUDGE ADVOCATE:

Q. 67. In minutes, how much time elapsed between the time the ship was abandoned by you and when she settled and sank?—A. That I couldn't tell. When this collision occurred, my orders to the other engineers were to shut the water-tight doors, and that is what they were doing; that order was carried out.

Reexamined by the COURT:

Q. 68. Were the engine room force ordered on deck after the collision by you, or did they leave without orders?—A. We were all

down the engine room when the collision occurred. I told the second engineer to slip up and see what had happened. He, of course, saw what had happened, and he told us what had happened. I told the other engineers and greasers to go up. Of course the engines were stopped, and I followed up.

Q. 69. Is that the reason no one was in the engine room when you went down after the collision?—A. Yes, sir.

Q. 70. Did any one ever go back into the engine room after they received the orders?—A. I went down.

Q. 71. Did you expect any others to go down?—A. She was
188 getting under water pretty slick. Of course you don't like to ask a man to do a job that you don't want to do yourself.

Q. 72. You were able to do all that was necessary?—A. Exactly.

(None of the parties to the inquiry desired further to examine this witness; he verified his testimony, was duly warned, and withdrew.)

Libellant's Exhibit 2.—Deposition of Spaniol—direct

In the United States District Court for the Eastern District of New York

April 29, 1925

Commonwealth & Dominion Line (Ltd.), owner of steamship "Port Philip," v. United States of America, owner of steamship "Proteus," and cross-libel. In admiralty

Appearances: Messrs. Lord, Day & Lord (by Mr. Allan B. A. Bradley), for the libellant; Mr. Charles E. Wythe, special assistant United States attorney, for the respondent.

189

STIPULATION

It is hereby stipulated and agreed by and between the proctors for the respective parties that the deposition of Louis Spaniol may be taken de bene esse on behalf of the libellant, at the United States Coast Guard station, Arundel Cove, Maryland, at eleven a. m., on the 29th day of April, 1925, before Charles B. Hoffman, a notary public in and for the State of Maryland, and in shorthand by Theodore A. Rettaliata, stenographer.

It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the said deposition are waived, and that all objections as to the form of questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality, relevancy, and competency of the testimony are reserved to all parties.

It is further stipulated that the reading over of the testimony to the witness and the signing and certification thereof are hereby waived; that stenographer's fees are to be taxable.

Thereupon LOUIS SPANIOL, a witness of lawful age, produced on behalf of the libellant, having been duly sworn by the notary, testified as follows:

Direct examination by Mr. BRADLEY:

Q. What is your occupation?—A. Boatswain, United States Coast Guard.

190 Q. Is that part of the United States Navy?—A. No, sir.

Q. Is it part of the Treasury Department?—A. Yes, sir.

Q. How long have you been in the Coast Guard service?—A. Twenty-five years, second day of May.

Q. On October 16, 1918, were you in that service?—A. Yes, sir.

Q. In what capacity?—A. Master's mate.

Q. On what vessel?—A. "Hudson," Coast Guard cutter "Hudson."

Q. Where was she stationed?—A. At barge office, New York City. That is, she was attached to the barge office at New York City.

Q. On the morning of October 16, 1918, were you on the "Hudson"?—A. Yes, sir.

Q. You were in command of her, weren't you?—A. Yes, sir.

Q. Where was she at that time?—A. At anchorage 27–C.

Q. Did you see the collision between the United States steamship "Proteus" and the steamship "Port Philip" on that morning?—A. Yes, sir.

Q. Where was your vessel at the time?—A. Anchorage 27–C.

Q. You were anchored or cruising?—A. Cruising.

Q. In what part of the fairway did the collision occur?—A. Well, the only answer I can give you on that is that the collision happened to the westward, I think it was, or southwestward of anchorage 27–C, because, you see, I was in Gravesend Bay, you know, a good distance away.

Mr. WYTHE. Was that southwestward?

A. I think it was southwestward.

191 Mr. BRADLEY. Look at the chart, if you want to.

The WITNESS (looking at chart). It has been so long since I have been called on to think of this, but from looking at this chart I do not think it gives our anchorage. I did not make any note of it at the time.

Q. Would you say that the collision occurred to the eastward or the westward of the center of the fairway?

Mr. WYTHE. Will you define that fairway a little?

Mr. BRADLEY. I will presently.

A. To the eastward of the fairway.

Q. Not to the eastward of the fairway?—A. Yes, sir.

Q. My question was, whether it occurred to the eastward or westward of the center of the fairway?—A. Oh, of the center of the fairway?

Q. Yes. A. Well, I am not positive about that.

Q. Well, did you see any vessels at anchor in the neighborhood of the point of collision? A. Yes; well to the eastward.

Q. Was the collision well to the westward of those vessels at anchor? A. It was to the westward of the vessels at anchor; yes, sir.

Q. Do you remember how the "Port Philip" was headed before the collision? A. No, sir. That is, taking compass headings, I do not know, sir.

Q. Approximately. I do not mean the exact bearing. A. She was headed to the westward.

Q. And after the collision how was she headed? A. When she settled?

192 Q. No; after the collision? A. After the collision?

Q. Yes. A. Well, after the collision she swung around.

Q. And headed how? A. She headed to the southward.

Q. Down channel? A. Down channel, yes, sir.

Q. Did you make a report to your superior officer about the collision and your rescue work? A. Yes, sir.

Q. Is this a copy of the report that I show you? A. That is a copy of my report with my signature.

Mr. BRADLEY. I am going to offer it in evidence and suggest that it be copied in evidence rather than being made a separate exhibit.

Mr. WYTHE. For what purpose are you offering this in evidence?

Mr. BRADLEY. Well, it shows his report at the time of what occurred on board his vessel. It is seven years since this collision occurred, almost, and here is a contemporary record.

Mr. WYTHE. I object to the report coming into evidence on the ground that the witness is here and prepared to testify himself under oath, and the report may be used only to refresh his recollection.

Mr. BRADLEY. I offer it in evidence.

(Report marked "Libellant's Exhibit 1, Spaniol.")

(NOTE.—It is stipulated, subject to the Government's objection, that libellant's Exhibit 1, Spaniol, may be returned to Mr.

193 Spaniol and a copy substituted in its place, with the same force and effect as if it were the original offered in evidence.)

(It is agreed by counsel for the respective parties that the copy of this exhibit shall be attached to this deposition.)

Q. After the collision, you took part in the rescue of some of the men from the "Port Philip," did you not? A. Yes.

Q. I show you a photograph marked "Libellant's Exhibit 5 for identification, Wallace" and ask you if the Coast Guard cutter "Hudson" is shown in that photograph? A. I couldn't swear to that——

Q. Well—— A. Because we have duplicate ships.

Q. Have you ever seen this photograph before, or have you ever seen one like it? A. I saw one like it, yes.

Q. Exactly like it? A. Yes, sir, I think I did. I am not so sure of that either.

Q. Does that appear to you to be a representation of the "Port Philip" and of your vessel and of a submarine chaser?—A. That looks like the "Hudson," but we have sister ships up there, you know, the "Calumet," and so forth.

Q. You were in a position with respect to the "Port Philip" that that photograph indicates the Coast Guard vessel to be, weren't you, at some time?—A. How is that?

Q. The "Hudson" at some time after the collision was in a position with reference to the "Port Philip" that that photograph represents?—A. Right; yes, sir.

Q. I show you another photograph marked "Libellant's Exhibit 4, Wallace" and ask you if that correctly represents the "Port
194 Philip" as she appeared to you right after the collision?—A. Yes, sir.

Q. I do not know whether the "Hudson," in maneuvering around the "Port Philip," got into a position to see the point of impact on the "Port Philip"—did she?—A. No, sir. She had settled, you know, when I come around that side. She had settled down in the water so far that I couldn't take notice. In fact, I didn't take notice of that.

Q. In your report I notice that you state the collision occurred between Norton's Point and Swinburne Island. That was your observation from the place where you were cruising?—A. Yes, sir.

Q. How far away from the point of collison were you when you first noticed anything, to your best estimate?—A. How far was I away from the point of collision?

Q. Yes; when you first noticed anything?—A. Well, I was on the anchorage 27-C. I suppose that must have been about a half a mile, probably. We were cruising that anchorage. That was our orders, to cruise that anchorage and I was in that triangle there.

Q. 27-C was north of Norton's Point?—A. Yes, sir. Now, the distance from that out to that wreck, I couldn't say. I suppose I would say it was one third of a mile.

Q. And you immediately steamed to the point of collision?—A. Yes. I think my report states that.

Q. And you went alongside of the sinking vessel, the "Port Philip?"—A. Yes, sir.

Q. What side did you go alongside of?—A. On the starboard side of her.

Q. And at that time she was headed to the southward, down channel?—A. Not quite.

195 Q. How was she headed?—A. She was headed more to the westward at that time, when I was alongside of her.

Q. To the west—was she headed due west?—A. I couldn't say that.

Q. Well, you said that before the collision she was headed to the westward and after the collison she was headed to the southward?—A. After the collision, after she had settled.

Q. And I assumed the force of the collision swung the boats around?—A. Probably so.

Q. When you got alongside of her, then, she was headed between south and west?—A. She was headed westerly, I will say. I didn't take no bearings at the time, sir.

Q. I understand.—A. I didn't take no bearings when this thing happened, you know.

Q. After you got alongside, did you get any order from the pilot of the "Port Philip?"—A. Yes.

Q. What was that?—A. To lay off, that he was going to beach his vessel.

Q. Was the "Port Philip" sinking rapidly?—A. Yes.

Q. When you got there, was her stern down far?—A. Partly sinking at the stern, you know.

Q. Did you find any men struggling in the water?—A. Yes.

Q. How was the tide?—A. That I can not remember.

Q. You refer in your report to a strong tide.—A. Well, you asked me how it was. There was a tide.

Q. A strong tide?—A. Yes.

Q. One way or the other?—A. Yes.

Q. Did you rescue the men that were in the water?—A. Yes.

Q. And you rescued other men from the sinking vessel?—A. Yes.

196 Q. And you took her lifeboats in tow and towed them up to the battery, ultimately?—A. Yes.

Q. Would you be able to mark on the chart with any degree of accuracy the place of collision?—A. No, sir.

Q. But it was to the westward of the vessels at anchor?—A. It was to the west of the vessels at anchor. Now, these vessels was anchored on 27-C, you know.

Q. And the southward of that?—A. Sir?

Q. And to the southward of 27-C also.—A. Well, I do not know about that. I did not know you were referring to those that were anchored to the southward.

Q. Yes.—A. I don't know anything about them. I mean the vessels I was protecting in 27-C. I had vessels anchored there loading ammunition, you know.

Q. And when you speak of the collision occurring to the westward, you mean to the westward of those vessels?—A. Yes, sir.

Q. And, of course, the collision occurred well to the southward of where they were anchored?—A. Yes.

Q. And you estimate that distance at about a half a mile?—A. One-third or half a mile, I am not sure.

Q. I understand. That is all I have to ask you.

Cross-examination by Mr. WYTHE:

Q. Will you mark on this chart, No. 360, U. S. C. & G. S., where the anchorage was that you have referred to as 27-C?—A. You want me to draw a line through here on the chart?

197 Q. If you will, please, indicate just where that anchorage was.—A. Well, now, this is probably a later chart. I do not know whether this is the anchorage now or not.

Q. No; I mean the anchorage that you have referred to in your testimony as 27–C; just show me where that was.—A. It is this triangle [witness indicates by drawing a triangle on the chart].

Mr. BRADLEY. Are you going to put that chart in evidence now?

Mr. WYTHE. Yes; in a few minutes.

Q. Now, you were concerned only with vessels anchored inside of that triangle, were you?—A. At that time.

Q. You say there were vessels anchored also to the southward of that anchorage 27–C at the time of the collision?—A. There were vessels anchored there, but the number I could not tell you, sir. Now, they may have been to the southward of Nortons Point for all I know, sir.

Q. But there were vessels outside of 27–C to the southward, you remember that?—A. Yes; I remember that. That is where the convoy anchored out there.

Q. Can you tell us whether there were many ships anchored to the southward there?—A. No, sir; I could not.

Q. Can you tell us how far to the westward of Nortons Point those anchored vessels extended?—A. No, sir; I can not.

Q. Could you say whether any of them were close to the prolongation of the easterly line of Ambrose Channel? Do you understand what I mean by that?—A. Yes; I understand what you mean.

198 They were pretty close to the channel. It was between Nortons Point and the channel that these vessels were anchored. They anchored right along there, but how close I could not exactly say.

Q. Now, what part of the 27–C anchorage, approximately, was your vessel in when your attention was first attracted to these vessels, either colliding or about to collide?—A. How far was I away?

Q. No; in about what part of that triangle were you? Will you indicate that on the chart?—A. My duties at that anchorage was to cruise that anchorage day and night on 27–C, and not to leave that anchorage unless an emergency arose like this thing did, and I do not suppose I could tell you exactly—that is, I could not take a pencil and mark that spot, sir, on the chart. I couldn't very well do that, but we were cruising around in that triangle.

Q. You were within that triangle you have marked on this chart when you first observed this trouble?—A. Yes, sir.

Q. And that was then to the southward and westward of your position at that time?—A. To the southward, yes.

Q. You do not remember whether you were at the easterly part or the westerly part of that triangle, do you?—A. No, sir; I do not.

Q. What first attracted your attention to this trouble down there?—A. The blowing of a number of whistles, sir.

Q. Then when you heard these whistles, I assume you looked down there to see what the whistles were being blown for?—A. Yes, sir.

Q. Now, tell us, as far as you can remember, when you first
199 looked, what you observed with reference to these vessels?—A. When I first looked, when my attention was first drawn toward that direction, I noticed that the collier was very close on top of this "Port Philip."

Q. You noticed that when you first looked?—A. Yes, sir.

Q. What kind of whistles were they that attracted your attention to it? Were they short, rapid blasts or long blasts?—A. When my attention was directed—after thinking that thing over, and to be justified in saying anything as to both parties, I could not very well say.

Q. Was it usual or unusual to hear whistles of steamers being blown down there at that time?—A. It is usual to have vessels that are anchoring outside of that anchorage, outside of 27–C, in case they want a pilot, or they want the pilot boat, to blow for a pilot. For instance, if the pilot boat is proceeding down the bay and one of the vessels anchored there wants to communicate with the pilot boat, they will blow the pilot call.

Q. What is the pilot call?—A. Well, that is a number of whistles, I do not know just how many. I do not remember the number of blasts, but I remember that sometimes they blowed for the pilot boat.

Q. Would that be a number of short and rapid blasts?—A. Yes; I think it would. There is another thing about the whistles. Whenever a vessel, an ammunition boat, comes into load, or comes in our direction to load, wanting to anchor in anchorage 27–C, they blow C G before they can enter that anchorage. C G, that is what they blow; that is to call my attention to the fact that they want to come into that anchorage.

Q. What do you mean by C G?—A. That is the Morse code.
200 Q. For Coast Guard?—A. Yes, sir. That is blown by whistle.

Q. These whistles you heard at that time were not the C G call, were they?—A. No, sir.

Q. So that was not what attracted your attention?—A. No, sir.

Q. Are you prepared to say it was not a pilot call?—A. No, sir; it did not sound to me like a pilot call.

Q. It was different from that?—A. Yes.

Q. And it was different from the usual signals that you would be likely to hear down there?—A. It was different from the usual signals I would be likely to hear; yes, sir.

Q. It could not have been any passing signals that you heard, could it? Would that have attracted your attention to it?—A. Well, that would have attracted my attention if it had been passing signals. That has happened already, one vessel passing another, and they give a salute by the whistle. Of course, naturally, I look

in that direction at a time like that. In fact, we were always on the lookout for signals.

Q. So that almost any whistle would attract your attention?—A. Yes, sir.

Q. You were on the alert all over your anchorage?—A. Always; yes, sir.

Q. And the first whistles that did attract your attention were the whistles blown when the two vessels were in pretty close quarters?—A. The whistles had already been blown when I saw the collier pretty well close to the other ship; the whistles had already been blown then, and there were no whistles after that.

Q. There were no whistles after that?—A. No, sir.

201 Q. The whistles that attracted your attention were blown very shortly before you saw the vessels?—A. Yes, sir.

Q. A matter of seconds?—A. One second, you mean?

Q. I mean, was it a matter of seconds or some minutes after you heard the whistles before you saw the vessels?—A. After I heard the whistles and my attention was in that direction, why, I suppose it was a matter of seconds; about fourteen or fifteen seconds, I should say.

Q. You actually saw the ships come together then?—A. Yes, sir.

Q. Could you, from your point of observation, tell us how far from the most westerly of the anchored vessels the collision took place?—A. Westerly of my anchorage?

Q. How far to the westward of any of the anchored vessels—southward, that would be?—A. That I could not tell you, of the anchored vessels.

Q. You can not testify at all as to what part of the fairway the collision took place in?—A. No, sir; I was too far off.

Q. You were a distance off, a third to a half a mile away, I think you said?—A. I will say one-third. I had better make that one-third.

Q. That is when you first saw the vessels?—A. Yes.

Q. And you immediately turned and proceeded in that direction?—A. Yes.

Q. Did you speak to the collier at all?—A. No, sir.

Q. When you got to the scene of the collision, was the collier still there?—A. Yes, sir.

Q. Had she gotten clear of the "Port Philip"?—A. Yes, sir.

202 Q. And was standing by?—A. Yes, sir.

Q. You were on the "Hudson?"—A. Yes, sir.

Q. I assume you ran at full speed from the time you started until you got to the scene of trouble?—A. Yes.

Q. About how long did it take you to get there?—A. About, I suppose, about ten minutes.

Q. What speed does the "Hudson" make?—A. She will go about nine or ten miles.

Q. After you arrived and the "Port Philip's" pilot told you he was going to beach the vessel, did you proceed along with her until she was beached?—A. She was not beached.

Q. She was not beached?—A. No sir.

Q. Did you proceed along with her until she sank, I should say?—A. I laid alongside, just kept alongside of her until she sank. That is, I laid off of her; I did not go right up; I laid off of her to keep within distance, hailing distance rather.

Q. At the time you arrived there, did the "Port Philip" have any way on her, when you first arrived alongside of the "Port Philip?"—A. Well, I am not sure about that. I do not know.

Q. She afterward did get way on her after you got alongside when they attempted to beach her, did she not?—A. Yes; he went ahead on her, sir.

Q. Did you proceed to any distance along with the "Port Philip" before she sank?—A. Just long enough for the vessel to swing around, you know. She was swinging all the time and settling at the same time. Now, I just kept up slow speed, very slow speed, to keep alongside of her, very slow speed.

Q. About how far would you say she traveled before she sank from the point of collision; just your best guess?—A. Well, that I couldn't say, sir. I am not so sure of myself there, sir.

203 Q. Can you give us any estimate of it at all?—A. I do not think I can.

Q. What I am trying to get at now is the distance from the point of collision to the point where she sank, if you have any idea at all as to it?—A. No, I have no idea. I couldn't give it to you, because I was confused there at that time, you know, and I never paid any attention to the distance whatsoever.

Q. You say your engines were going at slow speed while you were keeping alongside of her after the collision?—A. Slow speed, yes. That is, I was under one bell. I was working to bells, in other words.

Q. Working to various bells?—A. Yes.

Q. Of course, you could not remember what bells they were now?—A. No.

Q. And I would not ask you to.—A. No, sir; I can not. I began to pick the men up out of the water then, and my attention was no more to the vessel; my attention was to the men in the water.

Q. Did any other vessel assist you in picking up the men from the "Port Philip"?—A. Not that I remember, because I received all of the men from the "Port Philip" on board of my vessel.

Q. Can you tell us now, from your memory, how the collier and the "Port Philip" were heading when you first saw them?—A. The "Port Philip" was across the collier's bow, and then the collier was very close on to her when I took notice.

Q. How was the collier heading?—A. I could not tell you that by compass, sir.

Q. Well, approximately?—A. Up channel.

Q. That would be generally a northerly direction?—A. Yes.

204 Q. And the "Port Philip" was heading across toward the west?—A. Well, now, I couldn't say exactly whether it was to the westward or southwestward, you know.

Q. But generally westward so that she was crossing the bow of the collier?—A. She was across the bow of the collier, sir.

Mr. WYTHE. I offer in evidence the chart marked by the witness as Government's Exhibit 1, Spaniol, the letters 27–C having been written by counsel within the triangle made by the witness.

Re-direct examination by Mr. BRADLEY:

Q. I have only one or two more questions: You spoke of the vessels anchored to the south of you being convoy vessels?—A. Yes, sir.

Q. That was the anchorage for vessels going out in convoy?—A. Yes.

Q. How long had it been such an anchorage, approximately?—A. That was established there during the war, but just what date I do not remember, sir.

Q. It was there quite a while?—A. Yes.

Q. And it was well known to be the anchorage for vessels that were to go out in convoy?—A. That is it. That was established just for that purpose and it was there at that time.

Q. You knew it at the time?—A. I knew it was the anchorage for the convoy; yes, sir.

Q. And the people about the harbor knew it?—A. Well, I don't know.

Q. It was well known?—A. Well, that I could't say.

Q. A seafaring man using the harbor would know it?—A. Any seafaring man, and by that do you mean a captain of a ship, and so forth?

205 Q. Yes?—A. Yes, I think he would know it. I think captains or pilots or anything like that would know it.

Q. That is what I mean.—A. Yes, sir; they would know it.

Q. Were there any signals that vessels flew in that anchorage, convoy signals, do you remember?—A. Yes, sir.

Q. If they were going out in convoy?—A. That is, signals indicating they were going out?

Q. Yes?—A. Well, that I couldn't tell you.

Q. You do not know one way or the other?—A. I know that they flew signals, but what they would indicate I couldn't tell you. They were code signals.

Q. Your recollection about this whole affair has not been refreshed from that time to this, until very recently, has it?—A. Just very recently, and I was very much surprised.

Q. You had forgotten all about it?—A. I had forgotten it. Never gave it a thought any more.

Q. I think, Mr. Spaniol, that it is possible that you have underestimated the distance from 27–C to the point of collision. I wish

you would look at the chart, Government Exhibit 1, Spaniel, and just check that up, if you are able to, from the chart.

(Witness complies.)

Mr. WYTHE. I object to that question on the ground that the witness has already testified that he did not know where the point of collision was, that he has made an estimate of the distance from anchorage 27–C, and that is the only way in which he has indicated the point of collision.

206 Q. (By Mr. Bradley.) Was the collision south of a line between Hoffmann Island and Norton's Point?—A. No, sir.

Q. Was it northward of that line?—A. Northward of that line; yes, sir.

Q. I want you to just look at your report made at the time, in which you say that the vessels collided between Norton's Point and Swinburne Island.—A. You said Hoffmann Island.

Q. I do not think you understood my last question then, because you said just now you thought it occurred north of a line between Hoffmann Island——A. No, I mean Swinburne Island.

Q. You misunderstood me?—A. Yes.

Q. It occurred north of a line drawn from Norton's Point to Swinburne Island?—A. Right, sir.

Q. Can you estimate how far north, with any degree of accuracy?—A. No, sir, I could not.

Q. Well, as a matter of fact, after this lapse of time, you can not give us anything very definitely, can you?—A. That is right. There is no use doing an injustice to myself and to you people, too.

Q. Quite so, and I do not want you to. I want you to say what you are able to say with accuracy.—A. That is what I am trying to do.

Q. Do you remember where the wreck was located—you saw that afterwards—the wreck of the "Port Philip"?—A. Yes; I passed it afterwards.

Q. Do you remember where it was located?—A. Well——

Q. You do not remember how the tide was, do you?—A. I do not; no, sir.

Q. There is no dispute in the case—I may say this—that it was about a 2½ knot ebb tide; am I correct in that, Mr. Wythe?

Mr. WYTHE. I do not know about the speed of it. I know it was an ebb tide.

207 A. That I could not tell you, about how many knots. I know there was a tide which I put in my report. There was a tide running and I had a little difficulty in getting the men out of the water on account of that.

Recross-examination by Mr. WYTHE:

Q. Before you fold up that chart, can you mark on there approximately the location of that convoy anchorage you spoke of?—A. No, sir. I can tell you about where the vessels were, but to mark it off, I can not.

Q. You do not know what the anchorage limits were?—A. No, sir; I do not. It was handled entirely by the Navy at that time, the convoys were.

Q. You would not be notified as to what the limits of that convoy anchorage was?—A. If I was on that duty or had any duty to perform there I would be.

Q. But you had no notice of it?—A. No, sir.

Q. What were your duties at that time?—A. Receiving and taking care of ammunition vessels loading or discharging ammunition on this anchorage 27–C.

Q. Your duties did not concern anything outside of that anchorage?—A. No, sir.

Q. You were not concerned with anything in the convoy anchorage?—A. No, sir.

Q. And the convoy anchorage, whatever its limits were, was to the southward of 27–C?—A. Yes; they anchored to the southward; yes.

Q. It was a fairly large anchorage ground there, could accommodate quite a number of vessels in the convoy anchorage?—A.
208 At times there used to be quite a number of vessels there, but I do not know how many were there at this time.

Redirect examination by Mr. BRADLEY:

Q. When you got down to the scene of the collision, your boat and others were well clear of the boats to the eastward in the anchorage, weren't they?—A. The anchorage on 27–C?

Q. No; the boats that were then to the eastward of you, whatever boats they were.—A. To the southward of me, you mean? Are you speaking of the convoy anchorage?

Q. Yes; when you were at 27–C you were northward of those boats in the convoy anchorage, but when you got down to the scene of the collision you were to the westward of them.—A. Well, those boats that were anchored there, those convoy boats that were anchored, they were anchored to the southward.

Q. And eastward?—A. Yes.

Q. And there were other boats to the northward of them that were anchored?—A. Of the collision?

Q. Yes.—A. To the northward?

Q. No; northward to the convoy boat anchorage.—A. I do not think, and I am not sure—I wouldn't like to say—I do not think there were any boats anchored to the northward of that point there.

Mr. WYTHE. What point is that?

A. The point of the collision.

Q. (By Mr. BRADLEY.) Whatever boats there were at anchor in the neighborhood were to the eastward and the southward?—A. Yes; that is right.

Q. And you were well clear of them?—A. I was clear of them.
209 Q. And the "Port Philip" and "Proteus" were too?—A. Yes, sir.

Recross examination by Mr. WYTHE:

Q. When you say well clear, what do you mean by well clear?—A. I didn't say "well clear." I said I was clear of them.

Q. You didn't say "well clear."—A. Mr. Bradley said "Well clear." And I said I was clear of them.

Mr. BRADLEY. The record will show that.

Q. (By Mr. WYTHE.) Have you any idea exactly how far clear of them you were?—A. No, sir.

Q. Your attention was put entirely upon the two vessels that had been in collision and not the vessels at the anchorage ground?—A. It was when I noticed that the ship was sinking.

Q. What I mean by that is, you were looking at the two vessels in trouble and not at the vessels at the convoy anchorage?—A. Yes; not at the vessels at the convoy anchorage.

Q. That is the reason you haven't any idea as to how far off from the convoy anchorage the collision occurred?—A. No, sir; I have no idea. I know I was clear of those vessels.

Q. (By Mr. BRADLEY.) What you were looking after was the rescue of life?—A. That is it exactly, sir.

(Examination of the witness concluded.)

(Thereupon, at twelve o'clock m., the taking of depositions was concluded.)

210 *Libellant's Exhibit 1, Spanish*

"HUDSON," *October 16th, 1918.*

From: Commanding officer, "Hudson."
To: Captain commandant, via division commander, New York division.
Subject: Report of assistance rendered.

1. While the "Hudson" was cruising over anchorage 27 C on the morning of October 16th, 1918, at 10.10 a. m., it was observed that a United States naval collier and a British steamer were in danger of colliding. Proceeded at once to the scene. At 10.13 a. m., vessels collided between Nortons Point and Swinburne Island. Manoeuvred "Hudson" in position alongside of sinking ship, which proved to be the British S. S. "Port Philip" which was rammed by the U. S. S. "Proteus." Meanwhile cleared away and lowered lifeboat and manned her. Lifeboat cleared away, while the "Hudson" put alongside of sinking vessel with the intention of rescuing crew.

2. Thinking it possible to beach the vessel before she sank, the pilot ordered the "Hudson" to keep clear of ship's side. Acting under the pilot's orders I immediately left ship's side and stood by where I could render immediate assistance. As the vessel was sinking rapidly, part of the crew took to lifeboats. The vessel settled so quickly that the remainder of the crew were obliged to jump overboard.

3. It was observed that one of the men struggling in the
211 water was being carried away by a strong tide. The lifeboat from the "Hudson" was ordered to rescue this man, who appeared to be in a drowning condition. Meanwhile the remainder of the crew of the "Hudson" rescued five other members of the sinking ship by means of life rings with lines made fast to them and thrown from the deck of the "Hudson" and the men brought alongside and then aboard and supplied with dry clothing and blankets.

4. The "Hudson" proceeded alongside of the three lifeboats from the sinking vessel, with the remainder of the members of the crew, who were also taken aboard. The "Hudson's" lifeboat came alongside and the man who had been picked up by them and taken aboard and cared for.

5. Upon mustering the crew of the sunken vessel, the names of all the survivors were taken, which was verified by the captain and all hands accounted for.

6. At 10.45 a. m., under way and proceeded with three lifeboats in tow for the barge office. All survivors turned over to the British consul.

7. The "Port Philip's" home port was London, England; master, John Jack; crew of 38 officers and men; registered tons, 2,586 net, 4,060 gross; draft loaded 23' 11" forward and 25' aft; cargo 4,900 tons of steel billets, automobile parts, barbed wire, and cotton waste. The pilot was A. Cannavale, 16 Bay 25th Street, Bath Beach, Brooklyn, New York, N. Y.

L. SPANIOL, *Master's Mate.*

212 *Libellant's Exhibit 3.—Testimony of Gormly*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, as owner of the steam collier "Proteus" and cross libel

It is stipulated that the annexed testimony of George Gormly at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by said George Gormly on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or in part by either party on the trial of the said libel and cross libel

and that all objections as to materiality, relevancy, and competency of the testimony are reserved.

Dated, New York, April 27, 1925.

LORD, DAY & LORD,
Proctors for Libellant.

RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross Libellant.

213 A witness called by the judge advocate entered and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, rating, and present station?—A. George Gormly, sea. 2 cl., U. S. Navy; U. S. S. "Proteus."

Q. 2. How long have you been in the Navy?—A. Since Feb. 9, 1918.

Q. 3. Were you on board the "Proteus" on October 16, 1918?—A. Yes, sir.

Q. 4. At the time of the collision?—A. Yes, sir.

Q. 5. Where were you at the time?—A. Forward crow's nest.

Q. 6. Will you state what you observed in reference to the collision? What you saw in respect to the two vessels?—A. We were coming in. We saw this ship coming out from behind these other ones. She was about one hundred yards away when she was reported.

Q. 7. Did this boat come out between these other ones?—A. Yes, sir.

Q. 8. Seeing this boat coming out, did you give any whistles?—Two whistles from the "Proteus."

Q. 9. Then what happened?—A. That I cannot recollect.

Q. 10. There were other whistles?—A. Yes, sir.

Q. 11. You don't remember them at all?—A. No, sir.

Q. 12. Did you notice when the vessels collided?—A. Yes, sir.

Q. 13. Where was the vessel that the "Proteus" struck, in respect to the vessels that she came between, that were at anchor?—Do you remember?—A. I do not.

214 Q. 14. Are you a judge of distance on the water?—A. No, sir.

Q. 15. What did you do before you went in the Navy?—A. Teamster.

Q. 16. You have only been in the Navy since February?—A. Yes, sir.

(Counsel for the Cunard S. S. Co., interested parties, did not desire to examine this witness.)

(Captain N. S. Hansen, U. S. N. R. F., did not desire to examine this witness.)

Examined by the COURT.

Q. 17. Did you report when you sighted the "Port Philip" coming out?—A. Yes, sir.

Q. 18. How did you report?—A. "Ship coming from starboard bow."

Q. 19. Did you sing out, or report through the voice tube?—A. Through the telephone.

Q. 20. You got an answer?—A. Yes, sir.

Q. 21. Who answered your 'phone?—A. I couldn't tell.

Q. 22. You have testified the "Proteus" blew two whistles. Did you hear any whistles from the other ship?—A. No, sir.

(None of the parties to the inquiry desired further to examine this witness; the witness verified his testimony, was duly warned, and withdrew.)

215 *Respondent's Exhibit A.—Deposition of Wallace—direct.*

United States District Court, Eastern District of New York.

Commonwealth & Dominion Line (Ltd.) against United States of America, and cross suit. 5293—1923.

Be it remembered that on Saturday, August 16, 1924, pursuant to stipulation of counsel hereunto annexed, at room 410 United States courthouse and post office building, in the city and county of San Francisco, State of California, personally appeared before Murier Canfield, a notary public in and for the city and county of San Francisco, State of California, duly appointed, commissioned, and sworn to administer oaths, etc., William Wallace, a witness called on behalf of the United States.

Messrs. Lord, Day & Lord, represented by Allan B. A. Bradley, Esq., appeared as proctors for the libellant, and Charles E. Wythe, Esq., special assistant U. S. attorney, apppeared as proctor for the United States of America, respondent, and the said witness having been first duly cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in the cause aforesaid, did thereupon depose and say as is hereinafter set forth.

(It is hereby stipulated and agreed by and between the
216 proctors for the respective parties that the deposition of the above-named witness may be taken de bene esse on behalf of the United States of America at room 410, United States courthouse and post office building, in the city and county of San Francisco, State of California, on Saturday, August 16, 1924, before Murier Canfield, a notary public, in and for the city and county of San Francisco, State of California, and in shorthand by Charles R. Gagan.)

(It is further stipulated that the deposition, when written up, may be read in evidence by either party on the trial of the cause; that all questions as to the notice of the time and place of taking the same are waived, and that all objections as to the form of the questions are waived unless objected to at the time of taking said deposition, and that all objections as to materiality, relevancy, and competency of the testimony are reserved to all parties.)

(It is further stipulated that the reading over of the testimony to the witness and the signing thereof and certification are hereby expressly waived.) Stenographer's fees to be taxable.

WILLIAM WALLACE, called for the United States, sworn:

By Mr. WYTHE:

Q Captain Wallace, you are a master mariner? A. Yes, sir.

Q How long have you had your master's license? A. Since September 21, 1921.

Q How long have you been going to sea, all together? A. Since 1909.

217 Q On October 16, 1918, you were aboard the U. S. S. "Proteus"? A. I was, I was navigating officer at the time.

Q What was your rank in the Navy at that time? A. Ensign.

Q On October 16, 1918, were you on watch at the time of the collision between the "Proteus" and the "Port Philip"? A. I was.

Q Where were you stationed? A. On the bridge.

Q What time did you go on the bridge that morning? A. About nine o'clock.

Q At that time where was the "Proteus"? A. Approximately off Ambrose Light Vessel, inward bound.

Q How was the weather on that morning generally? A. The visibility was good; cloudy, but visibility good.

Q The "Proteus" was carrying cargo? A. A cargo of coal for the Navy, bound from Newport News.

Q About what speed was the "Proteus" making as she came up Ambrose Channel? A. She was making about eleven knots.

Q That was full speed? A. That was full speed.

Q What was your duty on the bridge as navigating officer coming up Ambrose Channel? A. Taking bearings on all headlands, buoys, and lights, and any object that was stationary.

Q You were taking bearings on that morning? A. Yes.

Q You don't remember now what the bearings were, and the times? A. No, I do not.

Q I show you a copy of the log of the "Proteus" for that day, and ask you if after looking at that you can tell us what bearings were taken, and at what times before the collision?

218 Mr. BRADLEY. Have you the original log, Mr. Wythe? I call for its production.

Mr. WYTHE. I have not the original log with me; I have a copy certified by the Chief of the Bureau of Navigation, in whose custody the original is, and also certified by the Acting Secretary of the Navy.

Mr. BRADLEY. I have no objection to Mr. Wallace refreshing his recollection from it, or from any other paper, but I would like to have the original log here. It is not here, so it can not be produced now, and we will go ahead.

Mr. WYTHE. Will you read the question, Mr. Reporter?

(Question read by the reporter.)

Q. (Continuing.) I mean beginning with the first one after passing Ambrose Light Vessel?—A. This is my log, and this is correct, because the time is taken at the time. I could not hardly remember it, you know.

Q. Will you look at that and tell us what time you had Ambrose Light abeam?—A. The Ambrose Light Vessel was abeam at 9.07 a. m.

Q. Can you tell us from your log what time you entered Ambrose Channel?—A. 9.20 a. m.

Q. What was the next bearing you took on the way up the channel?—A. Westbank Lighthouse, 9.54 a. m.

Q. That was abeam at 9.54?—A. 9.54 a. m.

Q. What is the next one?—A. Swinburn Lighthouse abeam 10.02.

Q. Did you take any other bearings before the collision with the "Port Philip"?—A. No, sir; I didn't take any other bearings.

219 Q. Captain, from the time you went on the bridge, did you remain there continuously up to the time of the collision?—A. Yes; until the time she dropped her hook off the Statue of Liberty.

Q. As you proceeded up Ambrose Channel, can you tell us which side of the channel you went up on?—A. On the right-hand side.

Q. The channel is marked by buoys?—A. Yes; by buoys, red and black.

Q. Which buoys were on your starboard side?—A. The red buoys.

Q. Can you tell us approximately how close to those buoys you went?—A. We were close to them, holding our side of the channel.

Q. After you passed the most northerly buoy of Ambrose Channel, was there any change of course, or did you keep straight on?—A. We followed the channel.

Q. How was the tide on that morning at about the time of the collision?—A. It was ebb.

Q. As you proceeded up the channel, did you see any anchored vessels in the vicinity of Gravesend Bay?—A. Yes; it was full of anchored vessels.

Q. How did those vessels bear from you?—A. They were on our starboard bow.

Q. How was the channel ahead of you with reference to other vessels?—A. Clear.

Q. The anchored vessels you have spoken of on your starboard bow, how close were they to the channel?—A. You mean the nearest ones, the most westerly?

Q. Yes.—A. I think the "Cape Romaine" was anchored almost in the channel; that is, she was outside of the channel buoys, but she was close up to them.

Q. The course that you were taking up the channel, did that 220 bring you close to the "Cape Romaine" and the other anchored vessels there?—A. It would have brought us past them, yes; a legitimate distance?

Q. About how far off would you say?—A. I should judge 100 yards or more.

Q. When did you first see the "Port Philip," how far off were you from her?—A. I should judge about four ship lengths.

Q. Lengths of your own vessel?—A. The length of the "Proteus"; yes.

Q. How long was the "Proteus"?—A. 522 feet.

Q. Where was the "Port Philip" when you first saw her?—A. Coming out between two other vessels, heading across the channel.

Q. Coming out between two of the anchored vessels you speak of?—A. She had been at anchor evidently, and she was coming out between the other anchored vessels. She was coming out from inside the vessels that were anchored there.

Q. You are speaking now of the anchored vessels off your starboard bow?—A. Yes.

Q. And the "Port Philip" was heading out between these vessels from your starboard to your port, is that right?—A. She was heading from our starboard side, yes, to port, crossing the channel.

Q. What would you say was the distance between the two anchored vessels between which the "Port Philip" was coming out?—A. I should judge at least 200 yards.

Q. Had you seen the "Port Philip" before that time?—A. No; I had not.

Q. Did you see her bow as the bow came out?—A. Pretty close to the stem end of her.

Q. Previous to the time you saw the "Port Philip," had you heard any whistles from her?—A. None, whatever.

221 Q. Or any other whistles in that vicinity?—A. None.

Q. You are sure of that?—A. Sure.

Q. Did anyone that you know of on the bridge see the "Port Philip" before you did? Did you hear any reports from any persons on the "Proteus"?—A. The captain of the "Proteus" said, "I wonder what he is going to do."

Q. Was that what attracted your attention to the "Port Philip" coming out?—A. That is what called my attention to her. I was paying no more attention to her. The captain was piloting the ship. It was my duty to take bearings.

Q. So that would indicate that the captain saw her before you did?—A. It would indicate that, yes.

Q. Were there any whistle signals exchanged between the "Proteus" and the "Port Philip"?—A. Yes, there were.

Q. What was the first whistle blown, and by what vessel?—A. I think we gave her two.

Q. Before that two-blast signal was blown, had you heard any at all from the "Port Philip"?—A. None whatever.

Q. Did you get an answer to that two-blast signal?—A. We got one whistle back.

Q. How soon after your two were blown?—A. Almost immediately.

Q. When you got that one-blast signal, what was done on board of the "Proteus"?—A. It was thrown to port.

Q. The helm was thrown to port?—A. Pardon me, to starboard. When he gave the one whistle, we answered with one and threw her to starboard.

Q. Which way does that throw your rudder?—A. To starboard, the bow and the wheel at the same time.

222 Q. So that the head of the vessel would go to starboard?—A. No, it would go to port.

Q. What order was given on the bridge at the time for the rudder?—A. To the left.

Q. Was there any answer given to the one-blast signal of the "Port Philip"?—A. We gave one whistle, yes.

Q. After you gave the one whistle to the "Port Philip" in reply to her one, what orders were then given to the rudder or to the helm?—A. That is just the question you asked, isn't it?

Q. Suppose you tell us just exactly what orders were given to the wheelman from the time your first two-blast signal was given. Tell us the whistles and then the helm orders, as they occurred?—A. When we gave the two whistles, he was told to port his helm, or right wheel; when he answered with one he came back again; before she could answer the helm we came back on the left wheel, to give her the right of way she asked for.

Q. So that after you had answered the one-whistle signal you directed the head of your ship to the starboard, or port?—A. To the starboard. Wait a minute, gentlemen, you have me mixed up here with the starboard and the left and the right.

Q. Now, Captain, after you sounded the two-blast signal on the "Proteus," you did make a change of helm, didn't you?—A. When the two-blast was sounded then the order was given almost at the same time.

Q. After you blew the two-blast signal there was an order given to the helmsman, wasn't there?—A. Starboard, yes.

Q. If that order was carried out, how would that throw your bow?—A. To port.

223 Q. How soon after that order was given did you get the one-blast signal from the "Port Philip"?—A. At almost the same time.

Q. Then was your helm changed again?—A. It was changed to the other way, to give her the right of way she asked for.

Q. So as to throw your head to starboard?—A. To starboard.

Q. Did you notice whether, under the first change of helm, the head of the ship changed any?—A. No. I didn't, she wouldn't change, she was too heavy; you have to give her plenty.

Q. On the second change of helm, to throw her head to starboard, did she change her course under that?—A. She did. She was thrown pretty near hard over at that time.

Q. Was she kept hard over?—A. Yes, she was.

Q. How did the "Proteus" steer, did she steer easy, or was she heavy in coming round?—A. She was heavy unless you gave her

the hard over, and then she came swinging good. With a light wheel, she didn't take much hold.

Q. What would you say was the speed of the "Port Philip" as you saw her coming out, what is your best estimate of her speed?—A. I should judge three or four knots an hour.

Q. After you answered the one-blast signal of the "Port Philip," were there any other whistles blown?—A. He gave three.

Q. What did that indicate?—A. That he was going astern.

Q. Was there any chance in mistaking that signal for anything else?

Mr. BRADLEY. I object to that. Let him tell us what he saw and heard. I think that is for the court to determine.

A. No, sir.

224 By Mr. WYTHE:

Q. When that three-blast was heard on the "Proteus," what was done then on your ship?—A. We gave her full astern.

Q. No change in the helm?—A. Straightened it up a little.

Q. What whistles were blown after the three from the "Port Philip"?—A. She gave us five, asking us what we were going to do.

Q. Did you reply to that?—A. Before she gave the five we gave her the three, telling her that we were going astern.

Q. Were there any other whistles blown from then on up to the collision?—A. No; there were not.

Q. Tell us how the vessels came together, as you saw it?—A. We were going astern with both engines full astern, and she was checking her way, and the "Port Philip" seemed to stop and then go ahead again.

Q. Where was she struck?—A. I would not know exactly the distance, but she was struck on the port quarter, back at the break of the poop.

Q. What part of the "Proteus" struck her?—A. The bow.

Q. At about what angle?—A. I should judge about 75 degrees leading aft.

Q. At the time the vessels came together, did you take any bearing?—A. Yes, sir.

Q. Can you tell us what bearings you took?—A. I don't remember them, no.

Q. You testified regarding this collision before a naval board of inquiry, did you not?—A. Yes.

Q. At that time you testified as to what those bearings were?—A. Yes.

Q. I show you a report of the testimony you gave at that
225 time, page 196, and ask you if you can refresh your recollection from that and tell us what the bearings were at the time of the collision?—A. I took off bearings of Fort Wadsworth, which was bearing north-northwest, and Hoffman Island, I saw the brick building on it and it was bearing west-northwest.

Q. Those bearings that you have just given were taken by you on the ship's compass, were they, or how were they taken?—A. These bearings were taken on the compass.

Q. At what times were those bearings taken; where were the two vessels with reference to each other when you took the bearings?—A. They were just about in the position in which they collided.

Q. How long did they remain together? I mean approximately, I do not mean the exact time.—A. She just hit and went right on; the "Port Philip" seemed to get her speed, the pilot seemed to get her out of the channel, she didn't stop her speed at all, she went right on.

Q. Did the collision swing either vessel around?—A. Yes, it kind of swung the "Port Philip."

Q. Did you take any compass bearing as to which way the "Proteus" was heading?—A. Yes.

Q. When did you take that bearing with reference to the collision, was it before or after?—A. It was taken at the time she hit.

Q. Can you remember which way the ship was heading at the time you took that?—A. If I can see the chart I will be able to prove it, and I won't have to look at your books at all.

Q. Just look at the record of your testimony before the board of naval inquiry and see if you can tell us which way the ship was heading?—A. A little to the eastward of north.

220 Q. Now, I will ask you, Captain, to take these models and place them as nearly as you can showing the two vessels at anchor between which the "Port Philip" came out, and then put the "Port Philip" in and the "Proteus" at the time you first saw the "Port Philip"?—A. I have drawn a diagram.

Q. The names "Proteus" and "Port Philip" are written in on the diagram at the direction of the witness. Do you know the names of either of the anchored vessels between which the "Port Philip" came out?—A. No; I do not.

Q. Now, Captain, will you again place the models and have them show the situation of the "Proteus" and the "Port Philip" at the time they came together?—A. I have done so.

Q. This diagram that you have just made for us is not intended to be drawn to scale, is it?—A. That is right, but that is about the relative positions they were at the time.

Q. In the first position, marked "Proteus 1" and "Port Philip 1," about what was the distance between the two vessels when you first saw the "Port Philip"?—A. I should say about four ship lengths.

Q. What was the bearing in points on your starboard bow of the "Port Philip" in that position, about how many points on your starboard bow—can you recollect that?—A. Sure I can recollect, if I look at this chart; about one point or 15 degrees.

Mr. WYTHE. I offer in evidence the diagram as U. S. Exhibit 1.

(The paper was here marked "U. S. Exhibit 1, Wallace.")

Q. Captain, did you notice any difference in the speed of the "Port Philip" before the two vessels came together?—A. Yes.

227 Q. What difference did you notice?—A. She seemed to stop and then to go ahead again.

Q. Both stop and go ahead again before the collision?—A. Both stop and go ahead before the collision; yes.

Q. And at the time of the collision, did the "Port Philip" have any way on her through the water?—A. She did, and then he opened her up.

Q. About how much way would you say she was making in knots at the time she was hit?—A. About three or four knots.

Q. But she had slowed down before that?—A. She had; yes.

Q. Did you have lookouts posted on the "Proteus" that morning?—A. Yes, sir.

Q. Where were they?—A. The bridge was full of them; they were on the bridge, and on the forecastle head, both.

Q. Did you hear any report from any of the lookouts of the "Proteus" before the "Port Philip" was seen from the bridge?—A. No, sir.

Q. In your estimation, how many vessels were anchored over there in that anchorage where the "Port Philip" came out?—A. I could not tell you just how many.

Q. What is your best estimate?—A. Between 10 and 15—10, 15, or 20, or somewhere in there, a whole convoy of them. There were 10 or 15 vessels there, anyway.

Q. Did you have anything to do with writing up the log book on that day?—A. Yes.

Q. How was the log book written up?—A. As things happened.

Q. Did you personally make notes on the bridge?—A. Yes.

228 Q. What became of those notes afterwards?—A. They were given to the yeoman, and the yeoman copied the smooth log for me.

Q. Did you sign the smooth log sheet when it was made up?—A. Yes.

Q. I show you this document which purports to be a certified copy of the log book, and ask you if that is a copy of the log on that day as written up by the yeoman?—A. To the best of my knowledge, yes, it is.

Q. That was written how—on the typewriter?—A. On the typewriter, yes.

Q. Does he make out loose sheets?—A. Yes.

Q. What is done with those loose sheets afterwards?—A. They are put in the log.

Q. In a book?—A. In a book.

Q. Who else besides yourself would sign the log book in the usual course?—A. The captain is supposed to sign it. It is supposed to be examined by me before it is signed, to see that it is all correct.

Q. What is your practice in regard to the rough notes, what did you do with them?—A. Gave them to the yeoman who copied them into the smooth log.

Q. What did the yeoman do with them after he copied them into the smooth log?—A. I don't know. All of those notes are examined

before he types them, and after he types them examined by those who wrote them, and each man signs his name.

Q. When was the smooth log made up for that day?—A. The same day.

Q. And signed the same day?—A. Yes.

Mr. WYTHE. I offer in evidence the certified copy of the log book, subject to comparison with the original when it is available.

Mr. BRADLEY. I object to the reception in evidence of this
229 paper, and I again call for the production of the original log and the rough sheets, having already given notice to produce these documents at this deposition.

Mr. WYTHE. May I ask what the ground of objection is?

Mr. BRADLEY. There is no proof that this is a copy of either of those documents.

Mr. WYTHE. I am offering them subject to comparison with the original.

Mr. BRADLEY. We will let the objection stand.

(The document was marked "Government Exhibit 2, Wallace.")

By Mr. WYTHE:

Q. Captain, you examined the original smooth log of the "Proteus" before you signed it on that day, didn't you?—A. Always.

Q. Did you find it correct in every respect?—A. Yes; I would not have signed it if it had not been.

Q. Now, tell us, if you can, what happened aboard the "Proteus" after the collision, after the ships came together, what maneuvers were made?—A. Both engines were going full astern at the time of the collision; when she backed away from there we came very near backing into the "Cape Romaine," which was lying there at anchor.

Q. What was done then?—A. The ship was stopped; we gave her a kick ahead to keep her from going into the "Cape Romaine." The captain on the bridge asked if he could be of any assistance, but he was not needed; other ships were around there giving all the assistance needed.

Q. You mean assistance to the "Port Philip"?—A. To the "Port Philip."

Q. About how close did your stern come to the "Cape Romaine" at any time, what was the closest you ever came to her?—A. 100 feet.

230 Q. I don't think I have asked you, Captain, about the period of time that elapsed between your first seeing the "Port Philip" and the time of the collision, itself, about how many minutes?—A. Three minutes.

Q. During those three minutes, about how much of that time were you going full speed astern?—A. One minute. You asked from the time we saw her, before we started going astern?

Q. No. I mean during the three minutes you have spoken of, how long were the engines full speed astern? I will put it this way:

How long were the engines going full speed astern before the collision?—A. Going two minutes astern on one engine.

Q. Which engine?—A. The starboard engine. Both of them were going astern for two minutes, and then the port engine was stopped and the starboard still going astern, trying to throw her around some more.

Q. At the time of the collision, was the starboard engine still backing?—A. Yes. She was backing after the collision, as well.

Q. Did you see what became of the "Port Philip" after the collision?—A. Yes.

Q. What did she do?—A. Evidently she was trying to get out of the channel, so she would not block navigation, and she started slowly to sink. The crew was running forward; there was very much excitement and commotion aboard her.

Q. Where did she go?—A. She went out of the channel, on the port side of the channel up on the mud.

Q. Which side of the channel did the collision happen on?—A. On the starboard side.

Q. Then the "Port Philip" headed across the channel to get out of the channel?—A. Yes.

231 Q. Did you see her sink?—A. Yes.

Q. About how far from the point of collision was it that she sunk, according to your best estimate?—A. It is pretty hard to give you that; I could give you the correct time from the time she hit; it was just eleven minutes up to the time she sunk.

Q. Can you tell us whether she sank in the channel or not?—A. I think she sank right in the edge of the channel.

Q. On which edge would that be, the westerly or easterly?—A. Westerly.

Cross-examination.

Mr. BRADLEY. I offer in evidence the notice to produce served upon the United States attorney in New York on August 4, 1924. I ask to have it marked as an exhibit.

(The document was here marked "Libelant's Exhibit 1 Wallace.")

Q. In stating that the speed of the "Proteus" was eleven knots, do you refer to the speed over the bottom?—A. Yes.

Q. There was nothing in the visibility to affect this case in any way, was there?—A. Not a bit.

Q. As far as you can recall, who was on the bridge of the "Proteus" at the time?—A. There was the captain, myself, Lieut. Brackke. I don't recall the names of the quartermasters.

Q. I don't mean the names unless you can give them, but state what their rank was?—A. Mr. Breed, the chief quartermaster, two signal boys—they were quartermasters—and two wheelsmen. I am not sure whether there was another ensign up there, or not. I don't just remember, but I think there was.

232 Q. Your duties were, as navigating officer, to take the bearings as you came up?—A. Yes; to take the bearings as we came up.

Q. What was the duty of Lieut. Brackke?—A. He was an observer. I think he was just to see that the quartermasters kept their place.

Q. What was the duty of the chief quartermaster, Mr. Breed?—A. To watch for signals and write down the bearings that I gave him.

Q. He wrote down the bearings that you gave him after you took them?—A. At the same time that I took them.

Q. And what were the two signal boys there for?—A. To answer flags and signals given by other naval ships.

Q. And, of course, the two wheelsmen took care of the helm?—A. One man at the wheel and one standing by.

Q. One standing by to assist, if necessary?—A. Yes.

Q. How high would you say it was from the water to the eye of a man on the bridge?—A. I should say somewhere in the neighborhood of 45 feet. She has a narrow, high bridge, very high, I guess it was higher than that.

Q. Would you say it was higher than 45 feet?—A. I would not say that. It was in that neighborhood. She was very high in the bridge.

Q. Captain Hansen, at the naval court of inquiry, was of the opinion that it was 48 feet; would you accept that?—A. Well, that is not very much to miss it by after seven years, is it? That is only a difference of three feet.

Q. Was there any lookout in the crow's nest?—A. That I do not remember. I know there was a lookout on the forecastle head,
233 though; also the executive officer was up on the forecastle head. Do you want the names of those on the forecastle head?

Q. No. Your signal of two whistles was followed, you say, immediately by the "Port Philip's" one?—A. He gave the one before we had quit blowing.

Q. That is as I recall the evidence before, that his one was before your second had stopped blowing?—A. Yes.

Q. Is that correct?—A. Yes.

Q. Your signal of two blasts indicated that you intended to pass ahead of him, didn't it?—A. That is it.

Q. And at the time that two-blast signal was given, the order to the helmsman was given to direct your course to port?—A. To port.

Q. Is that right, Captain?—A. Yes.

Q. Did you notice any wash from the screw of the "Port Philip"?—A. All I could see was the white wake.

Q. Could you tell from that whether her engines were going astern, or not?—A. No; you couldn't. When she started her engines up she threw a white foam. If you keep backing any length of time you could, because she would throw the wash forward.

Q. On this occasion, could you tell from any indication in the water at the stern of the "Port Philip," whether her engines were going

astern or not?—A. No; I could not. The only thing I could go by was the rule of the road signal that he was going astern.

Q. Your statement that he was going astern, then, is your best judgment from the signals you understood him to give?—A. And the wake kicked up by his wheel. If he was to give her full astern, she would naturally jump ahead a few feet before she starts
234 astern; the force of the water coming against the hull has a tendency to push her until the wheels get hold and bring her back again.

Q. At any rate, you saw a boil at her stern?—A. That is it.

Q. But you could not tell from that whether the engines were going astern or ahead extra full?—A. No.

Q. They were going extra full, one way or the other?—A. The only thing I could say is according to her signals.

Q. Now, just answer the question I ask you. They were going extra full, one way or the other?—A. Yes.

Q. You could tell that?—A. Yes.

Q. Then your testimony that she was going astern is based entirely upon the signals you heard from her?—A. Yes; that is the only thing you can surmise from it.

Q. The answer of the Government in this case to the libel states that "shortly after passing the northerly buoy on the easterly side Ambrose Channel, the bow of a steamer which proved to be the 'Port Philip' was observed a short distance ahead on the starboard bow of the 'Proteus' standing out," etc. Do you agree with that statement?

Mr. WYTHE. I ask that the entire sentence be read into the record.

Mr. BRADLEY. I will read it all: "Standing out between two of the anchored vessels and apparently heading across the channel." Do you agree that it was shortly after passing the northerly buoy on the easterly side of the channel that you first observed the "Port Philip"?—A. Yes.

235 Q. And you were satisfied that the statements in the log, a copy of which is marked in evidence as "Government's Exhibit 2, Wallace," were correct?—A. Yes.

Q. Under the time of 10.09, the statement is made that the "Proteus" could not see the "Port Philip" until she was well in the channel. Is that right?—A. Yes.

Q. Then at the time you first observed her she was well in the channel?—A. Yes.

Q. I now direct your attention to Exhibit 1, the drawing you made, and ask you if the position marked "Port Philip 1," indicates the position of the "Port Philip" at the time you first saw her?—A. Relative to the other ships; yes.

Q. Relative to the other two ships at anchor?—A. Yes.

Q. You referred in your testimony to one of the ships as the "Cape Romaine"?—A. No; I did not refer to this as the "Cape Romaine"; I referred to the one we were backing into as the "Cape Romaine."

Q. That is what I refer to. Was that one of those two ships?—A. No. I don't think it was. The "Cape Romaine" was back of us. We know it was the "Cape Romaine" we were backing into.

Q. You don't think either of these two boats at anchor, on Exhibit 1, which I will mark "A" and "B," marking "A" the southerly one and "B" the northerly one, you don't think either of those is the "Cape Romaine"?—A. I won't be sure of that.

Q. You are not sure about it?—A. No.

Q. You don't remember; is that it?—A. That is it.

Q. At the time that you first sighted the "Port Philip," you were four ship lengths of your own vessel away?—A. About that, approximately.

236 Q. That would be about one-third of a knot?—A. Just about; yes.

Q. And you traversed the distance between the place where you first saw the "Port Philip" and the point of collision in three minutes?—A. Yes.

Q. During that time both your engines were going astern for two minutes?—A. Yes.

Q. How far did the "Port Philip" proceed ahead in those three minutes?—A. She proceeded far enough to get bumped.

Q. Far enough to get hit?—A. Yes.

Q. Of course, we all know that, but I want to know in feet.—A. I couldn't tell you that.

Q. Approximately, to the best of your judgment; how many of her own lengths?—A. I should say she came two lengths of herself, or more—two and a half.

Q. The impact of the collision threw the "Port Philip's" bow to port and your bow to port and your stern to starboard, didn't it?—A. No, sir, it didn't affect the "Proteus" at all; the "Proteus" was swinging at the time she hit. It did not hardly faze her. It threw the "Port Philip" this way.

Q. It threw the "Port Philip's" bow to port?—A. The "Proteus" was swinging to starboard all the time.

Q. Her bow to starboard?—A. Her bow to starboard. This had no effect on the "Proteus" to amount to anything. It did not stop her from going to starboard; it did throw the "Port Philip's" back this way.

Q. Indicating the "Port Philip's" bow moving to port and her stern to starboard; is that correct?—A. Yes.

Q. I show you the transcript of the testimony you gave at the
237 naval court of inquiry, and direct your attention to the questions at the bottom of page 203: "Q. After the collision the stern of the 'Port Philip' was thrown upstream, undoubtedly, and your vessel's stern swung to the eastward?—A. Naturally; when we hit her she carried our bow around." Do you agree with he evidence you gave at that time?—A. Yes.

Q. I call your attention again to the same record, to questions at pages 212 and 213: "Q. How long after the collision did you

plot the bearings"—referring to the headings you took on Hoffman Island and Fort Wordsworth.—"A. A minute or a minute and a half or two minutes before she was clear from her." Do you agree with the testimony you then gave?—A. Yes.

Q. In answer to a question by Mr. Wythe, you said that after the collision your stern came within one hundred feet of one of the vessels at anchor; do you recall so testifying just now?—A. Within one hundred feet of the stern, no. About 250 feet. I said 100 feet of the stern of the "Port Philip."

Q. Let me understand what you meant by that 100 feet.—A. The question was asked me how far at any time was the stern of the "Proteus" from the "Port Philip."

Q. And that is what you mean by your answer of 100 feet?—A. Yes.

Q. When you started to back away from the "Port Philip," how far from the vessel at anchor was the stern of the "Proteus"?—A. About 250 feet—about 100 yards. A matter of 50 feet is hard to judge when you are on a ship.

Q. I call your attention to the record of the testimony you gave at the naval court of inquiry, and to the question at page 211: "Q. I ask you to look at Exhibit 9 and ask you in respect to the ves-
238 sel marked 'Cape Romaine' in red pencil, when you started to back away from the 'Port Philip' how far away from the bow of the 'Cape Romaine' was the stern of the 'Proteus'?—A. About 100 yards." Do you agree with that testimony?—A. Yes.

Q. I show you a photograph, Captain Wallace, and ask you if that correctly represents the position of the "Proteus" and the "Port Philip" at or about the time of the collision?—A. Yes.

Q. The vessel with a camouflage is the "Port Philip"?—A. They are both camouflaged.

Q. On the one we can see a camouflage is the "Port Philip"?—A. Yes.

Q. And the one with the men leaning over the rail the "Proteus"?—A. Yes.

Mr. BRADLEY. I offer this photograph in evidence.

Q. I show you another photograph and ask you if that represents the point where the "Proteus" struck the "Port Philip" after the "Port Philip" had started to sink; does that correctly represent the "Port Philip" at the point where the "Proteus" struck her and after the "Port Philip" had started to sink?—A. This is your poop deck back here, isn't it?

Q. I suppose so.—A. She hit her right here; that is correct.

Mr. BRADLEY. I offer that in evidence.

Q. I show you another photograph and ask you if that correctly represents the position of the "Port Philip" after the collision and when they were trying to beach her on the west bank?—A. Yes.

239 Mr. BRADLEY. I offer that in evidence.

Q. I show you another photograph which apparently indicates the "Port Philip" further away from the "Proteus," after the

collision, and in a sinking condition. I ask you if that correctly represents that situation?—A. I could not say about that.

Mr. BRADLEY. I ask that this photograph be marked for identification.

(The photographs were here marked, respectively: "Libellant's Exhibit 2, Wallace"; "Libellant's Exhibit 3, Wallace"; "Libellant's Exhibit 4, Wallace"; "Libellant's Exhibit 5 for identification, Wallace.")

Redirect examination by Mr. WYTHE:

Q. Captain, you didn't have a Sandy Hook pilot at the time of this collision, did you?—A. No; a naval ship is not required to take a pilot.

Q. As you were coming up Ambrose Channel, do you remember passing any outbound vessels?—A. Yes; I think I do. I think one passed us just after we left Ambrose Light Vessel, and possibly another one passed us, but I am not sure.

Q. Do you remember whether any passed you just shortly before the collision—any outbound vessel?—A. I cannot remember.

Q. As you were coming up toward these anchored vessels on your starboard bow, with your own vessel in motion full speed ahead, was it possible for you to determine by looking at the anchored vessels whether any of them were in motion, or not?

240 Mr. BRADLEY. I object to that question. That is for the court and not for the witness to answer.

Mr. WYTHE. I will reframe the question.

Q. As you were coming up toward the anchored vessels on your starboard bow, with your vessel proceeding at full speed, by looking at the anchored vessels could you determine whether any of them were in motion, or not?

Mr. BRADLEY. I object to the question on the same ground; it is not for the witness to state that; that is for the court to say.

A. If you could see them, most decidedly you could determine whether they were in motion.

By Mr. WYTHE:

Q. Did you look at those anchored vessels as you were coming up?—A. Yes.

Q. Did you see any of them that appeared to be in motion?—A. From the distance I first saw them; no, they did not appear to be in motion. Furthermore, a ship leaving anchorage is supposed to give a signal before she comes out.

Mr. BRADLEY. I move that the latter part of the answer be stricken out as not responsive to the question.

By Mr. WYTHE:

Q. Now, Captain, these photographs which have been marked "Libellant's Exhibits 2, 3, and 4," and "Exhibit 5 for identification," do you know who took those photographs?—A. No, sir; I do not.

241 Q. Do you know what part of the "Proteus" they were taken from, what part of the vessel?—A. The one showing the length of the "Proteus" was taken from the after end of the "Proteus."

Q. That is Libellant's Exhibit 2?—A. Yes; that was taken from the poop of the "Proteus," I saw the man taking it myself.

Q. That is the after end, on the port side?—A. The after end on the port side.

Q. Do you know where any of the others were taken from?—A. This one was evidently from somewhere amidships on the "Proteus."

Q. You are referring to Libellant's Exhibit 3?—A. Yes. This one was probably taken from the same place, referring to Exhibit 4. I can not identify this one that is marked "Exhibit 5 for identification." You can not say from that that the ship is sinking, it looks there as if the ship is steaming away, because she is high in the water.

Q. You can not tell exactly what time, with reference to the collision, any of those were taken, can you?—A. Yes, I can. I remember one lad went down and got a camera to take a picture.

Q. That is the one you referred to that was taken from the port side aft, Libellant's Exhibit 2?—A. Yes; the port side aft.

Q. How soon after the collision was that taken?—A. I think almost at the time of the collision.

Q. Did you see a boat lowered from the "Port Philip" on the port quarter?—A. Port amidships.

Q. That boat was in between the "Proteus" and the "Port Philip"?—A. Yes.

Q. Did there appear to you to be any confusion among the crew of the "Port Philip" at the time the boat was lowered?—A. It was all confusion, that is, among the crew; they were running all over the deck.

242 Q. Captain, you are now master of a vessel, aren't you?—A. Yes.

Q. What vessel?—A. I am captain of the "A. F. Lucas" at the present time.

Q. She is a tanker?—A. Yes.

Q. In port now?—A. Yes.

Q. When did you arrive in port?—A. 7.15 this morning.

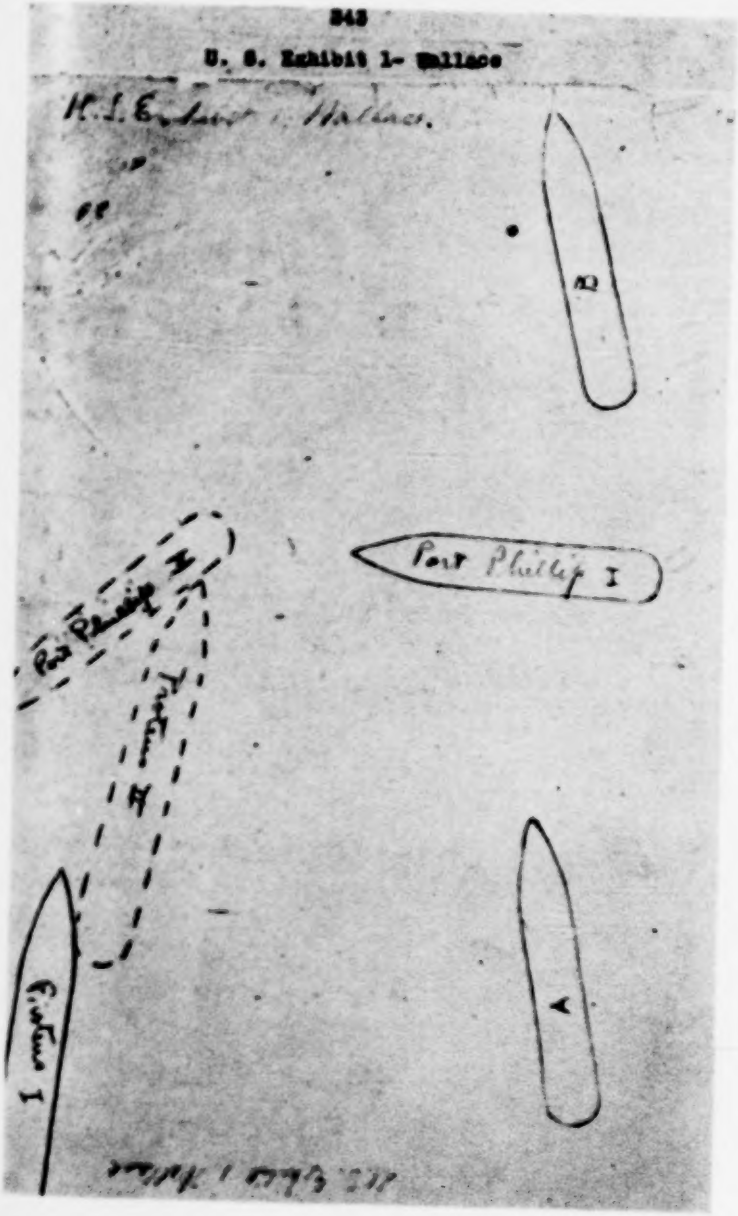
Q. And you expect to leave port to-day?—A. Yes.

Recross-examination by Mr. BRADLEY:

Q. How high above the water is the forward crow's nest of the "Proteus"?—A. According to my best estimate, it is about 15 feet above the bridge.

Q. That would be about 63 to 65 feet above the water?—A. Yes. I think her topmast is 145 or 150 feet, and I think she had a 60-foot topmast; her crow's nest sets in between her sticks, her derrick booms.

Q. In answer to a question by Mr. Wythe, you referred to looking at the boats at anchor; I understand your principal duty on the bridge was taking bearings of passing objects.—A. Yes.


843
U. S. Exhibit 1- Wallace
Port Phillip I
Port Phillip
Finlayson I

244
U. S. Exhibit 3- Wallace

United States of America,

NAVY DEPARTMENT.

Washington, June 17, 1922

I hereby certify that the annexed transcript of the Log of the USS [illegible] for the sixteenth (16th) day of October 1918 is a true copy according to the records

on file in the Bureau of Navigation.

Acting Chief of the Bureau of Navigation.

Office of the Secretary.

I hereby certify that R. H. [illegible]
who signed the foregoing certificate, was at the time of signing Acting Chief of the Bureau of Navigation
and that full faith and credit should be given his official acts as such.

In testimony whereof, I have hereunto set my hand and caused the Seal of the Navy Department to be affixed this twenty-sixth day of June one thousand nine hundred and twenty-two.

Assistant Secretary.

245

U. S. Exhibit 8- Wallace

Page 34

UNITED STATES SHIP _____

REMARKS.

Jan. 4	12 38	Stopped both engines on approaching Five Fathom Bank Lt. Ship.
	12 41	Went ahead full speed after hailing Lt. ship and receiving permission to proceed. o/s to 30 pso. Log 12.
	1 30	North East End abeam close aboard s/s to 41 pso Log read 20.6
	2 49	Alsesan Lt. on the bow Log 34.
	3 05	Absesan Lt abeam dist off 8 miles Log 40.6
	3 39	Brigantine on bow.
	3 48	Brigantine abeam dist off 1 1/4 mile.
	3 50	o/s to 40 pso. Log 43.

E. Wallace
Pilot, USHPP

4-5	4 48	Barnegat on bow. Log 57
	5 30	Barnegat at abeam dist off 7 1/2 mile changed course to E½S pso. Log read 65.8
	5 42	Changed course to SE pso. Log read 67.6
	6 22	Stopped port engine.
	6 29	Full ahead.
	7 22	Sea Grit abeam dist off 6 mile Log 82.2 Steering SE pso.

R. J. COOKY
1t.(JG) USNRF.

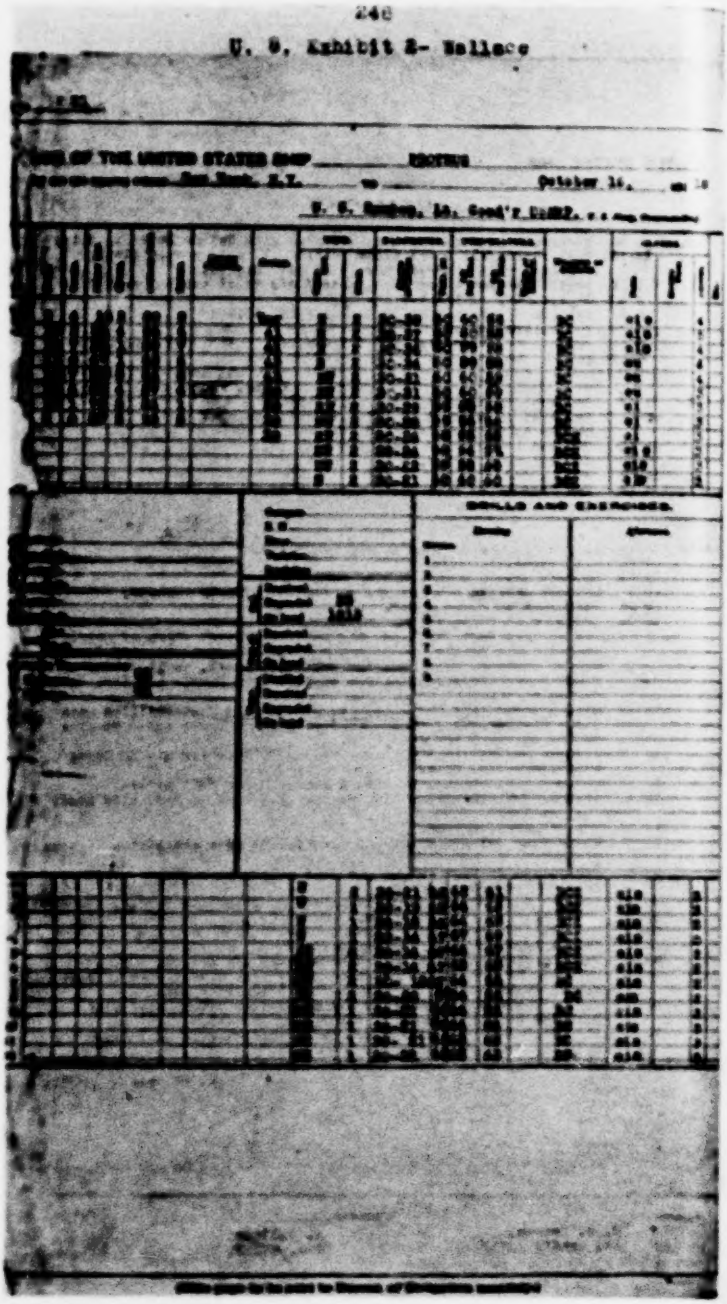
5-10	8 44	Stopped engine to take on net paravanes.
	8 56	Full ahead.
	9 09	Ambrose Lte V. abeam.
	9 20	Entered Ambrose Channel Lt. Commanding Officer sounding.
	9 54	Romer Bank Lt Buoy abeam.
	10 04	Swinburn Lt Buoys abeam.
	10 09	Saw Steamer Port Phillips, English core around stern of American Steamer Cape Romain, could not see Steamer Port Phillips from U.S.S. Proteus, until she was well in Channel, as there was a steamer anchored, just astern of Stm. Cape Romain and Str. laying astern of her.
	10 10	Str. Proteus gave two whistles, just as the Port Phillips gave one. The Proteus then answered with one & threw her hard over to the right at the same time.
	10 10	Stopped and reversed both engines to full astern giving three whistles at the time.
	10 11	Stopped Port engine, Starboard engine going full astern.
	10 11	Steamer Proteus struck Steamer Port Phillips on Port side shaft the quarter.
	10 13	Stopped Star. Engine.
	10 14	Commanding Officer called and prepared to give assistance to other Steamer.
	10 15	Full ahead on Port engine and full astern on Starboard Engine.
	10 15	Stopped Starboard Engine.
	10 16	Stopped Port Engine and full astern on Starboard engine.
	10 16	Clear of Str. Port Phillips.
	10 16	One third ahead on Port engine.
	10 20	Full astern on Starboard engine.
	10 40	Continue working at various speeds ahead and astern. In order to keep clear of other ships that were laying at anchor, U.S.S. Proteus stood by until other assistance came.
	10 54	U.S.S. Proteus proceeded on way at various speeds Str. Port Phillips steering ahead to get out of channel.
	12 04	Str. Port Phillips sunk stern first on West Side of Channel off Gravesend Anchorage.

E. Wallace

Approved
E. E. Hansen,
Lt. Comd'r USNRF

Received
E. Wallace
Pilot, USNRF.

(This report to be sent to Bureau of Navigation immediately.)


240

U. S. Exhibit 8- Wallace

October 14,

DRILLS AND EXERCISES.

247

U. S. Exhibit 2- Wallace

ADDITIONAL SHEET.

Page 22

UNITED STATES SHIP PROTEUS October 15, 1918.

REMARKS.

8-12	10 45	Passed thru Hell Gate narrows.
	11 00	Boarding Officer came aboard from guard boat, proceeded towards anchorage off Liberty.
	11 10	Boarding Officer left ship.

J. WALLACE
Mate. USNRF.

Hard.-4	12 10	Dropped anchor off Bedloe's Island 60 fathom on port chain, following bearings, Statue of Liberty Dis 5 degs. Battle Williams 5?? Brin. Sea Gate 60? Dins.
	12 40	Draft of ship Aft. 30 ft.
	1 30	Started unloading coal.

W. WALLACE
Mate. USNRF.

4-8	6 00	Sent Liberty party ashore.
	6 35	Knocked off discharging coal. Ships draft Aft. 29 ft. 4 in.

W. H. Briggs
C.E. (2) USNRF.

8-12	8 40	Ships stern aground in 4 fathoms water.
	9 30	Arthur L. Brainter Ble left ship on ten day furlough to expire Oct. 27th, 1918.

G. A. Kennard
C.E.(2) USNRF

J. S. WALLACE
1st. Cond'r USNRF.

W. Wallace
Master USNRF.

(This page to be used by Masters of Navigation Vessels.)

248 *Libellant's Exhibit 1, Wallace*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), against United States of America and cross suit

Sir: Please take notice that you are required to produce upon the examination de bene esse of William Wallace, George R. Breed, and Patrick J. Murray, witnesses on behalf of the United States of America herein, whose examination you have notified us will be taken in San Francisco and Los Angeles on the 15th and 16th August, 1924, the following described books, documents, and papers:

(1) The log book of U. S. S. "Proteus" for October 16th, 1918.

(2) The scrap log book of U. S. S. "Proteus" for October 16th, 1918.

(3) The engine-room log book of U. S. S. "Proteus" for October 16, 1918.

(4) The engineer's rough log of U. S. S. "Proteus" for October 16th, 1918.

(5) The engine-room movement book of U. S. S. "Proteus" for October 16th, 1918.

(6) Any and all other log books, writings, memorandum
249 books, note books, or other written records of U. S. S. "Proteus" or of any of her officers, for October 16th, 1918, in any way relating to the navigation of said vessel on said day, or to the movements of her engines, or bearing in any way upon the collision between U. S. S. "Proteus" and the steamship "Port Phillip" on the said day.

(7) Each and every exhibit marked in evidence or for identification before the naval court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which court convened on October 21st, 1918, and subsequent days.

(8) All other documents, notes, log books, papers, books, letters, and writings whatsoever in your possession or control or in the control of the United States of America in any way relating to the questions at issue in this cause.

In default of the production of the foregoing, secondary evidence thereof will be offered upon the taking of the testimony of said witnesses de bene esse.

Dated, New York, August 1st, 1924.

Yours, etc.,

LORD, DAY & LORD,
Proctors for the Commonwealth & Dominion Line (Ltd.),
25 Broadway, New York City.

250 To RALPH C. GREENE, Esq.,
United States Attorney for the Eastern district of New York,
Proctor for the United States of America,
Office & post office address, Room 700, 45 Broadway, Borough of Manhattan, City of New York.

Respondent's Exhibit B.—Deposition of Breed—direct

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), plaintiff, against United States of America, and cross suit, defendant

Deposition of George R. Breed, a witness on behalf of the United States of America, taken at the United States attorney's office, Federal Building, in the city of Los Angeles, county of Los Angeles, State of California, on Monday, the 18th day of August, 1924,
251 at the hour of 10.00 o'clock a. m., before Elmer L. Kincaid, a notary public in and for Los Angeles County, State of California, pursuant to stipulation herein contained.

Present: For the libellant, Allan B. A. Bradley, Esq.; for the respondent, Charles E. Wythe, Esq., and J. Edward Keating, Esq.

GEORGE R. BREED, a witness produced by and on behalf of the United States of America, having been first duly sworn, testified as follows:

(It is stipulated that the testimony may be taken by a stenographer; signing, sealing, certification, and filing waived; that all objections except as to the form of questions be reserved until the trial and that the testimony so taken be used interchangeably in either of the above-entitled suits, the stenographer's fees to be taxable.)

Direct examination by Mr. WYTHE:

Q. Mr. Breed, what is your present occupation?—A. I have a chicken ranch out in the San Fernando Valley.

Q. That is in California?—A. Yes, sir.

Q. That is your permanent residence now?—A. Yes, sir.

Q. You are not going to sea at the present time?—A. No, sir, I am on the retired list, on the 16th year retired list from the Navy.

Q. You had previously served in the Navy?—A. Yes, sir.
252 Q. For how long?—A. 16 years.

Q. What rank did you hold in the Navy during that time?—A. Well, the first 10 years I was from seaman to quartermaster first class, and then after that I was chief quartermaster.

Q. And when did you retire from the Navy?—A. July 21, 1921.

Q. On October 16, 1918, you were chief quartermaster on the U. S. S. "Proteus"?—A. Yes.

Q. Where was the "Proteus" on that date?—A. She was going from Norfolk to New York with a load of coal.

Q. You were on the bridge at the time of the collision between the "Proteus" and the "Port Philip"?—A. Yes, sir.

Q. What time did you go on watch that day?—A. Well, as chief quartermaster, whenever we were going in or out of a port I was on watch all the time, you know.

Q. What was the location of the "Proteus" when you went on the bridge before the collision; about where was she?—A. Why, at the lightship at the entrance of Ambrose Channel.

Q. Did you remain continuously on the bridge up to the time of the collision?—A. Yes, sir.

Q. What part of the bridge were you stationed on?—A. Well, no particular part; I was all around.

Q. You had no particular station on the bridge?—A. No; as long as I was on the bridge that was all that was necessary.

Q. What were your duties there as chief quartermaster?—A. Well, chief quartermaster has charge of the bridge, you know, the flags, chronometers, signals, and sees to the rough log and all the implements of navigation, steering the engine and things like that.

253 Q. Did you have any duty with reference to signals from other vessels?—A. Oh, yes.

Q. What was your duty as to that?—A. Why, you are supposed to watch out for all things like that, you know, and to be able to understand any signal that you saw in case it pertained to anything that interested the ship you were on.

Q. Did that also pertain to whistle signals from other vessels?—A. Yes, sir.

Mr. BRADLEY. I object to the question on the ground it is leading. I don't think you ought to lead the witness, Mr. Wythe.

Q. (By Mr. Wythe.) With respect to whistle signals from other vessels, what was your duty, if any?—A. Well, the whistle signals in the Navy are you might say the same as putting your hand out in an automobile in riding, and when you are going in and out of port you naturally would watch the ships to see what they blow to tell you which way they are going.

Q. Did you have any duty with reference to whistle signals from other vessels?—A. Well, if I saw a ship blowing a whistle I would say to the captain such a ship was blowing so many whistles.

Q. Now, as the "Proteus" proceeded up Ambrose Channel what part of the channel did she go on?—A. Well, as I remember, we were a little over from the center to the right; you see we were not hugging the buoys exactly, but we were to the right of the center of the channel.

Q. How far distant did you pass the buoys on your starboard hand as you came up, approximately?—A. Oh, maybe 40 feet, I don't know; I wouldn't like to leave that as an answer. I am not positive.

254 Q. Well, I want your best estimate from what you remember?—A. Well, 25 feet.

Q. Now, as you left the northernmost buoy of Ambrose Channel did you see any vessels anchored ahead of you?—A. Yes, sir.

Q. Where were those vessels that you saw anchored; how did they bear from you?—A. Well, off that way [indicating]—I forgot the name of that bay.

Q. That would be on your starboard bow, as you have indicated?—A. Yes; starboard bow.

Q. About how many vessels could you see anchored there, approximately?—A. I haven't any idea; there was a lot of them in there.

Q. There were a good many of them in there?—A. Yes, sir.

Q. Taking the most westerly of those anchored vessels, how far out of the channel would you say they were anchored?—A. Well, they were all over a ship's length—they would have to be such. I wouldn't say how many feet. They would have to be over a ship's length so when they swung around they wouldn't swing in the channel.

Q. Well, were any of them over a ship's length? You said they would have to be?—A. Yes; they were.

Q. Where were you standing on the bridge when you first saw the "Port Philip"?—A. On the starboard wing on the right-hand side.

Q. Where was the "Port Philip" when you first saw her?—A. She was just coming out from the anchorage into the channel.

Q. What part of the "Port Philip" did you see as she came out?—A. Just the forecastle, the forward part of the ship and the bridge. Of course I saw the stem as we call it, the forward part, first.

255 Q. Was there anything concealing the afterpart?—A. Yes, sir; the ships that were anchored there.

Q. Do you know who saw the "Port Philip" first on your ship?—A. Why, no; I don't know as I do.

Q. At the time that you first saw her had any whistles been blown?—A. No.

Q. What whistles, if any, were blown after you saw her?—A. Why, as soon as we saw the ship coming out I remember that there were two whistles blown.

Q. By which vessel?—A. On our ship, the "Proteus."

Q. Had any whistles been blown by either vessel before to your knowledge?—A. No, sir.

Q. Were you listening for whistles at that time?—A. Yes, sir.

Q. Now, at the time those two whistles were blown how much of the "Port Philip" was visible beyond these two anchored vessels?—A. Well, half of her, I guess, just about half of the ship.

Q. Did you receive any reply from the "Port Philip" to your two-blast signal?—A. She blew one whistle.

Q. How soon afterward?—A. Why, immediately.

Q. After the one-blast signal from the "Port Philip" were there any other signals sounded?—A. Why, she blew three.

Q. Did you give any reply to her one-blast signal?—A. Not to her one-blast signal; no, sir.

Q. What was the next whistle blown after the one-blast signal of the "Port Philip"?—A. She blew three—no; we answered with one.

Q. That was the next one blown?—A. Yes, sir.

Q. There were first two by the "Proteus" and then one by the "Port Philip"?—A. Yes, sir.

Q. And then one by your own vessel?—A. Yes, sir.

256 Q. Then what was the next whistle blown?—A. Why the "Port Philip" blew three.

Q. After that what was blown?—A. We answered with three.

Q. Were there any other whistles blown after that?—A. She blew five.

Q. What did the five indicate to your mind?

Mr. BRADLEY. I object to what that indicated to the witness on the ground it is not material.

Mr. WYTHE. Strike that out. It is not important; I agree with you.

Q. Did you notice from where you were whether the "Proteus" made any change in her course at any time before the collision?—A. She swung to starboard.

Q. Did she swing to port at any time?—A. No, sir.

Q. When did she swing to starboard with reference to the whistles that were blown?—A. When they first blew the two whistles, the first two whistles.

Q. The two whistles of which vessel?—A. The "Proteus."

Q. How soon after that did she swing to starboard?—A. Well, when they blew the two whistles that signified they were going to the right and I suppose the helm was ordered put over right then.

Q. Did you give any orders to the helm at all from where you were?—A. No, sir; I was in the starboard wing and the captain and the second mate and the quarter master, in the wing of the bridge.

257 Q. Now, from what you saw, Mr. Breed, how many points did the "Proteus" swing to starboard before the collision?—A. I couldn't say.

Q. Can you give us any estimate at all?—A. Well, no; I wouldn't like to made any statement as to that.

Q. Was it visible to you that she was swinging?—A. Oh, yes.

Q. Up to the time you sounded the two blasts you were proceeding at full speed, weren't you?—A. Yes, sir; until we sounded the two blasts.

Q. How was the channel ahead of you with reference to other vessels?—A. Well, there was no vessel, as I remember.

Q. In the channel?—A. Well, that is in our vicinity.

Q. Had you passed any outgoing vessels as you came up the channel?—A. Oh, yes.

Q. Which side did you leave them on, port or starboard?—A. Well, on our port side.

Q. Do you know of your own knowledge what orders were given to the engines before the collision?—A. No, sir.

Q. After the "Port Philip" was first sighted did you watch her continuously?—A. Oh, yes.

Q. What is your best estimate of the speed the "Port Philip" was making as she came out from the anchorage?—A. Not more than three to four knots an hour.

Q. Now, as you watched her was there any difference that you could see in her speed from then until the collision?—A. Why, she slowed; it seems that she slowed.

Q. At the time of the actual collision about how fast would you say the "Port Philip" was going?—A. As I remember she was what they call dead in the water; still.

258 Q. Whereabouts in the channel—that is, on which side of the channel—did the collision take place?—A. About, oh, it was on the right of the center of the channel; it was nearer the starboard side as you enter port than it was to the center of the channel.

Q. Nearer the starboard side of the "Proteus" as she was going up?—A. Yes.

Q. That would be to the eastward?—A. To the eastward; yes, sir.

Q. About how far was the point of collision to the westward of the nearest anchored vessel?—A. I don't know.

Q. Well, could you state it in lengths of either vessel?—A. No, sir.

Q. Now, you saw the two ships come together?—A. Yes, sir.

Q. How did they strike; what part of the "Proteus," what part of the "Port Philip"?—A. The bow of the "Proteus" struck the "Port Philip" on her port side just a little abaft to 'midships in what they call the waist deck aft.

Q. At about what angle; can you show us with the models [handing models to the witness]?—A. Like that [arranging models].

Q. Indicating about——

Mr. BRADLEY. About 45 degrees, isn't it?

The WITNESS. Yes, sir.

Q. (By Mr. Wythe.) About that, 45?—A. 45; yes, sir.

Mr. WYTHE. Indicating 45 degrees.

Q. Which way did the blow lead on the "Port Philip" forward or aft as the "Proteus" struck her?—A. Which way what?

259 Q. Which way did the blow lead as the "Proteus" struck the "Port Philip"; was she heading forward or aft on the "Port Philip"?—A. She was heading after, this way [indicating models].

Mr. WYTHE. Indicating about 45 degrees leading aft, is that all right?

Mr. BRADLEY. Yes, sir.

Q. (By Mr. Wythe.) After the collision what occurred on the "Proteus"; what did the "Proteus" do?—A. Why, we stood by for a short time to see if there was anything we could do for the other ship, the "Port Philip," and then we proceeded into our anchorage off the Statue of Liberty.

Q. Did you watch the "Port Philip" after you drew away from her to see where she went?—A. Why, yes, sir, we watched her, of course.

Q. Where did she go after you drew away from her?—A. She went across the channel and then sunk right there.

Q. Did you see her sink?—A. Yes, sir; naturally.

Q. Did you see any boats lowered from the "Port Philip"?—A. Yes, sir.

Q. When were those boats lowered with reference to the collision?—A. Why, they started lowering just as soon as she was hit.

Q. Did you notice any confusion aboard the "Port Philip" at the time of the collision and afterwards?—A. Why, not any more than you would naturally expect on a ship that was struck and about to sink.

Q. As you proceeded up Ambrose Channel before the collision and before you saw the "Port Philip" coming out did you notice any movement among the anchored vessels there?—A. No, sir, I didn't.

260 Q. Can you give us any idea as to how far from the stern of the "Port Philip" the "Proteus" struck, how many feet forward of the stern?—A. No, sir. I don't known how long a ship the "Port Philip" was.

Q. Mr. Breed, will you indicate with the model the situation at the time of the collision between the "Port Philip" and the "Proteus" showing also the position of the two anchored vessels between which the "Port Philip" came out [handing models to the witness]?—A. It has been a long time to remember.

Q. Just to the best of your recollection?—A. As I remember she came out that way and then we came up like that [indicating the models].

(Mr. Wythe draws with pencil around models which have been placed on paper.)

Q. Now, can you give the name of either of the anchored vessels between which the "Port Philip" came out?—A. No, sir; I don't remember them. They were probably got at the time and put on the log, in the log, but I don't remember.

(Mr. Wythe marks on one outline of model on paper "Proteus" and on another outline on paper "Port Philip" and on one outline on paper "A" and on one outline on paper "B.")

Mr. WYTHE. The anchored vessels are marked "A" and "B," "A" being the most northerly of the two. I offer the sketch in evidence.

(The sketch offered in evidence is marked by the notary "Government's Exhibit 1" (Breed), and is attached to the deposition.)

Mr. WYTHE. All right, take the witness.

261 Cross-examination by Mr. BRADLEY:

Q. Mr. Breed, will you tell me what your duties were on the bridge; I couldn't get it all down?—A. Why, chief quartermaster on a boat of that type. I was general and signal quartermaster, and going into port I was supposed to be on the bridge and keep a watch out for anything that concerned the ship on entering the port; if there were any signals to see that they were answered or received, and,

as I say, to watch out for anything that would concern the navigation of the ship or the safety of the ship going into port.

Q. You referred to flags; did you mean signal flags?—A. Yes, sir.

Q. And are those the signals you referred to when you spoke of signals just now?—A. Well, any sort of signals.

Q. Any sort of signals?—A. Whistle signals, flag signal, or the regular signals they use, semiphore.

Q. I think you also referred to chronometers; what were your duties with respect to them?—A. Well, they are the clocks, you know. I had to wind them and compare them, and what they call the tick every so often.

Q. Was there anything else?—A. You mentioned the rough log, I think.—A. Well, the rough log is, you know, a sort of a diary where you put down everything that happens every day in the different watches.

Q. Did you make the entries in the rough log on this occasion?—A. No, sir; I didn't.

Q. Did you see that they were done?—A. Well, no, sir.

Q. What were your duties with respect to the rough log?—
262 A. On the "Proteus" one of the officers always took the bridge, was on duty going in and out of port, and they made all of their entries on that watch in the log. My duties were when we were at anchor or anywhere to see that the quartermaster kept the log and kept it right and kept the entries correct.

Q. You testified, didn't you, before the naval court a week or so after the collision?—A. Yes, sir.

Q. You would rather trust your memory of the affair now or your memory of it then?—A. Then.

Q. The log of the "Proteus" at 10.09 states: "Saw steamer 'Port Philip,' English, come around stern of American steamer 'Cape Romaine.' Couldn't see steamer 'Port Philip' from U. S. S. 'Proteus' until she was well in the channel." There are further entries, but I direct your attention especially to the statement that you couldn't see her until she was well in the channel. When you first saw her was she well in the channel?—A. No, sir; she was not well in the channel.

Q. You don't agree with your log, then?—A. I don't agree with that; no, sir.

Q. The log entries were made at that time, weren't they?—A. Yes, sir.

Q. You think that they were more likely to be accurate or your recollection six years afterwards?—A. No. My recollection probably at the time was correct.

Q. Well, if it was correct at the time it is correct now?—A. It is correct now. I would like to withdraw that.

Q. Then you think that the log is more likely to be accurate with respect to the facts than your recollection six years afterwards?—A. I know it is.

263 Q. The next entry in the log is at 10.10: "Steamer 'Proteus' gave two whistles just as the 'Port Philip' gave one." In your testimony just now you stated that the "Port Philip's" one came immediately. Refreshing your recollection by this entry in the log would you say that the two were concurrent, that the one of the "Port Philip" was coincident with the second of your two?—A. Yes, sir.

Mr. WYTHE. Now, I object to your questioning the witness on the log entries for the reason that he has already testified that he did not make any log entries; that they were made by somebody else.

Mr. BRADLEY. In answer to that I might state that the witness can refresh his recollection by anything, and you have already offered in evidence a copy of the log on the deposition of Mr. Wallace. It is in evidence, therefore, and the witness can refresh his recollection from it.

Q. Now, you know what a cross signal is, don't you?—A. Yes, sir.

Q. Would you say that either vessel blew a cross signal to the other?—A. Why, yes, sir.

Q. Which one?—A. We blew two whistles and the other, the "Port Philip," came back with one. That is cross signals.

Q. If no time elapses between the two signals would you call it a cross signal?—A. Yes, sir.

Q. Then it is a cross signal from both vessels?—A. Why, no, sir, I wouldn't say so. The "Proteus" told the other vessel what she was going to do, first.

264 Q. If the "Port Philip's" one blast came at the same time as the second of your two blasts, would you say that that was a cross signal?—A. If it was immediately following.

Q. I didn't ask you that. I said if the "Port Philip's" one blast was blown at the same time that the second of your blasts was blown, would you call that a cross signal?—A. Why, yes, sir; it is still a cross signal, but coming both at once, why each ship would wait for the other. They could both see that they both blew the whistles at the same time, and each ship would have to wait for the other to see what they were going to do, but it would still be a cross signal.

Q. It would be a cross signal from both vessels then, each crossing the other, is that your idea?—A. No.

Q. Then would you say that the "Port Philip" blew a cross signal because the first of your two came before her one?—A. Yes, sir.

Q. Although the second of your two was at the same time as her one?—A. Yes, sir.

Q. You say that that is a cross signal?—A. Why, I should call it a cross signal.

Q. Now, then, when you blew two, the first signal you gave, did that direct your attention to the "Port Philip"; had you seen her before?—A. Yes, sir.

Q. I direct your attention to the transcript of the testimony taken before the naval court where you testified; and on page 251 this

question occurs and this answer: "Q. State to the court just what you observed with reference to the 'Port Philip' and the 'Proteus'?—A. The first thing I observed was when we blew the two whistles."—A. Yes, sir.

Mr. WYTHE. I will ask you to have the entire answer read in this record.

265 Mr. BRADLEY. You can do it on redirect if you want to.

Mr. WYTHE. I object to the witness being confronted with a partial answer and then cross-examined on it.

Mr. BRADLEY. Well, I will go on if you want me to, but it is not material to what I was going to ask [reading]:

"The first thing I observed was when we blew the two whistles. Just the forecastle of this ship was coming out between the two ships anchored there. We blew two whistles and as we blew our last whistle she blew one. We answered with one whistle, and then she blew three and immediately she blew five, one rather long and four short ones and we blew three whistles, and that was all that happened until we struck the ship."—A. Yes, sir.

Q. Refreshing your recollection by that testimony you gave six years ago would you like to modify your testimony that you observed the "Port Philip" before you blew two?—A. It doesn't say there that we observed it before.

Q. It says "The first thing I observed was when we blew the two whistles." Refreshing your recollection by that statement wouldn't you think you were more likely right then than now?—A. Why, have I made a statement that I saw——

Q. There it is [indicating]—A. Have I made a statement that I saw the ship before we blew the whistles?

Q. I gather from your testimony given at that time that your attention was directed by your two blasts; is that correct?—A. Yes, sir.

Q. Now, Mr. Breed, what do two blasts mean?—A. It means that the ship is going to the right and directing my course to starboard.

266 Q. Two blasts?—A. I believe so, unless I have forgotten.

Q. I call your attention to the Pilot Rules under the heading "Signals": "Two short blasts of the whistle signify intention to direct course to own port." Do you still think that two blasts mean "I am directing my course to starboard"?—A. No; I was wrong.

Q. One blast means "I am going to pass you port to port"?—A. Yes, "I am going to pass you port to port" is right.

Q. And two blasts "I am going to pass you to starboard and direct my course to port"?—A. Yes, sir.

Q. When the two blasts were blown did you hear the order "Left rudder" given on your vessel?—A. I don't remember.

Q. If it was given you didn't hear it?—A. No, sir.

Q. Well, in your direct testimony you stated that the "Proteus" when you blew the two blasts swung to starboard. In view of the significance of the two blasts do you wish to correct that statement?—A. Why, that was wrong, because I sometimes get muddled up.

Q. Well, you are not in the Navy now?—A. No, sir.

Q. And it is a little stale?—A. No, sir; it has been a long while away.

Q. Then you wish to change your testimony in that respect that when the two blasts were blown the "Proteus" swung to starboard?—A. Well, I don't know what to say. That is wrong. I realize I have got the whistles wrong.

Q. Did your vessel swing to starboard immediately the two
267 blasts were blown?—A. I would like to ask if you blow the two blasts and go to port and the other ship would of course go the other way, how would you pass them port to port.

Q. How would you pass them port to port, if you go that way and she goes this way (illustrating).—A. I don't quite get that.

Q. I don't know, Mr. Breed. You were in the Navy 13 years and I am only a lawyer. I am trying to get the facts from you. I will ask you again, when the "Proteus" blew two blasts did she immediately swing to starboard?—A. No; she answered that other ship with one blast and then swung to starboard.

Q. How long a time elapsed between the time that she blew two blasts and the time that she started to swing to starboard?—A. Oh, a half a minute, maybe.

Q. Well, when the "Port Philip" blew one blast, which was the same time as the second of your two, what signal would your vessel then give?—A. We answered with one blast.

Q. And what signal followed that from either vessel?—A. She blew three blasts.

Q. And then what followed?—A. We answered with three.

Q. And then what followed?—A. She blew five.

Q. You think that the "Proteus" answered what you understood to be three blasts from the "Port Philip"?—A. Yes, sir.

Q. With three blasts?—A. Yes, sir.

Q. Before the "Port Philip" blew the danger signal?—A. Yes, sir.

Q. I direct your attention to the same question and answer on page 251 of the testimony before the naval court, in which you stated:

"We blew two whistles and as we blew our last whistle she
268 blew one. We answered with one and then she blew three, and immediately she blew five, one rather long and four short ones, and we blew three, and that was all that happened until we struck the ship."—A. Yes.

Q. You testified, as you say, before the naval court that the "Port Philip's" five blasts followed her three blasts before you answered with three?—A. Yes, sir.

Q. Refreshing your recollection by your testimony given at that time, would you say that you were in error just now?—A. Yes, sir.

Q. When you said that the "Proteus" answered the "Port Philip's" three with her three before the "Port Philip" blew the alarm?—A. Why, yes, sir; I am in error.

Q. And the testimony you gave before is correct?—A. Why, yes, sir. I had it all fresh in my mind and written down and everything then.

Q. Well, then, the "Port Philip" blew eight different blasts before you answered with your three?—A. She must have if she blew three and then five.

Q. How far away from the "Port Philip" would you judge your boat was when you blew two blasts?—A. Oh, around 500 yards.

Q. Had you heard any report from any lookout?—A. No, sir.

Q. Do you know whether there was any lookout in the crow's nest?—A. I don't know, sir.

Q. Did you see any evidence in the water at the stern of the "Port Philip" which would indicate to you how her engines were working?—A. I don't remember anything about that.

Q. I call your attention to the evidence you gave before the naval court, at page 254: "Q. Did you see any evidence that
269 the engines of the "Port Philip" had been stopped?—A. No, sir; I never noticed. Q. Did you see any evidence that her engines were working astern?—A. I never noticed her engines at all." That agrees with your present recollection?—A. Yes, sir.

Q. You didn't notice her engines at all?—A. No, sir; I don't remember as I did.

Q. And refreshing your recollection by the testimony you gave at that time, six years ago, would you now say that you didn't notice whether they were working astern or ahead?—A. No, sir.

Q. Do you know how the "Proteus" answered her helm?—A. Why, sluggish; that is, a large ship drawing 32 feet of water of course doesn't answer it as quick.

Q. And you say that you were coming up at full speed?—A. Yes, sir. Our highest speed was 13 knots, full speed.

Q. Do you know the width of Ambrose Channel?—A. No, sir, I don't.

Q. You were somewhat to the starboard side of mid-channel?—A. Yes, sir.

Q. Well, now, you first saw these vessels anchored on your starboard bow as you left the last buoy of Ambrose Channel; is that correct [indicating on map]?—A. Yes.

Mr. Bradley. The witness refers to red buoy No. 18 at the northernmost end of Ambrose Channel, easterly side, shown on U. S. C. & G. S. Chart No. 369.

Q. As I understand it, these vessels were all anchored more than a ship's length from the edge of the channel?—A. Yes, sir.

270 Q. Well, now, referring to the diagram which you prepared, Exhibit 1 in this suit, I understand that you do not pretend that is drawn to scale?—A. No, sir.

Q. Will you draw a line indicating the edge of the channel on that diagram?

Mr. Wythe. Now, I object to the question unless it is made clear as to what channel is meant.

Mr. Bradley. I mean the channel he has been talking about.

Mr. Wythe. Ambrose Channel ends before he gets up there. There is no channel that I know of at that point.

Q. He referred to the channel, and I want to have him draw a line indicating the edge of the channel he is talking about.—A. Well, there is an anchorage there. I believe there is a line where they should anchor and where they should not anchor.

Mr. BRADLEY. That is correct.

Mr. WYTHE. I am content to have him put that line on the diagram.

Q. (By Mr. BRADLEY). All right, put that line on the diagram.—A. This is pretty close here [indicating]—this is not to scale or anything.

Q. I know that. I am going to ask you some questions to indicate how far these distances are in a minute. Will you draw that line? [Drawing.]—A. I don't know; that is kind of rounding [indicating].

Q. You haven't left enough room on that diagram to draw the line, have you?—A. No; that is the trouble.

271 Q. Well, that line would be more than a length of ship A or B to the westward of those ships, would it not?—A. Yes, sir.

Q. Now, when the "Proteus" collided with the "Port Philip" was the "Port Philip" to the westward or eastward of that line?—A. To the westward.

Q. How much to the westward would you say, giving us your best estimate?—A. Oh, she must have been her own length.

Q. Then your evidence is that the "Port Philip" was at least two ship lengths to the westward of the boats "A" and "B" at anchor?—A. Yes, sir.

Q. This diagram shows "A" and "B" anchored less than one of their own lengths apart?—A. Yes.

Q. That is, of course, not drawn to scale?—A. No.

Q. What distance would you say there was between "A" and "B"?—A. Well, they were 500 foot ships, I guess—at least 200 yards.

Q. They had to be anchored so as not to give each other a foul berth?—A. Yes, sir.

Mr. BRADLEY. That is all.

Redirect examination by Mr. WYTHE:

Q. Mr. Breed, do you know who wrote up the original log entries about that collision?—A. Why, no, sir; I don't know.

Q. Did you write up any of them yourself?—A. No, sir.

Q. Now, there is one thing that you are a little bit mixed up on, and I want to get it straightened out. At any time before the "Proteus" blew two whistles did you see the "Port Philip"?—

272 A. Well, she must have been seen or they wouldn't have blown the two whistles.

Q. Oh, I am speaking about you; did you personally see the "Port Philip" before the "Proteus" blew the two whistles?—A. I don't know now. I did know then.

Q. You can't remember that now?—A. No, sir.

Q. You did see her, though, after the two whistles were blown?—A. Yes, sir.

Q. Was that before the "Port Philip" blew any, that you saw her?—A. Why, yes, sir.

Q. Did you see the steam from her whistle when she blew one?—A. When she blew one; yes, sir.

Mr. WYTHE. That is all.

Recross-examination by Mr. BRADLEY:

Q. To revert to the subject Mr. Wythe was just discussing, you say that you don't remember now but you did remember then?—A. Yes, sir.

Q. You would trust your testimony given before the naval court on that subject, wouldn't you?—A. Yes, sir.

Q. Your answer, "The first thing I observed was when we blew the two whistles"?—A. Yes, sir.

Q. If that was the first thing you observed, you don't know whether prior to that time the "Port Philip" had blown or not, do you?—A. Why, no; I don't.

Mr. BRADLEY. That is all.

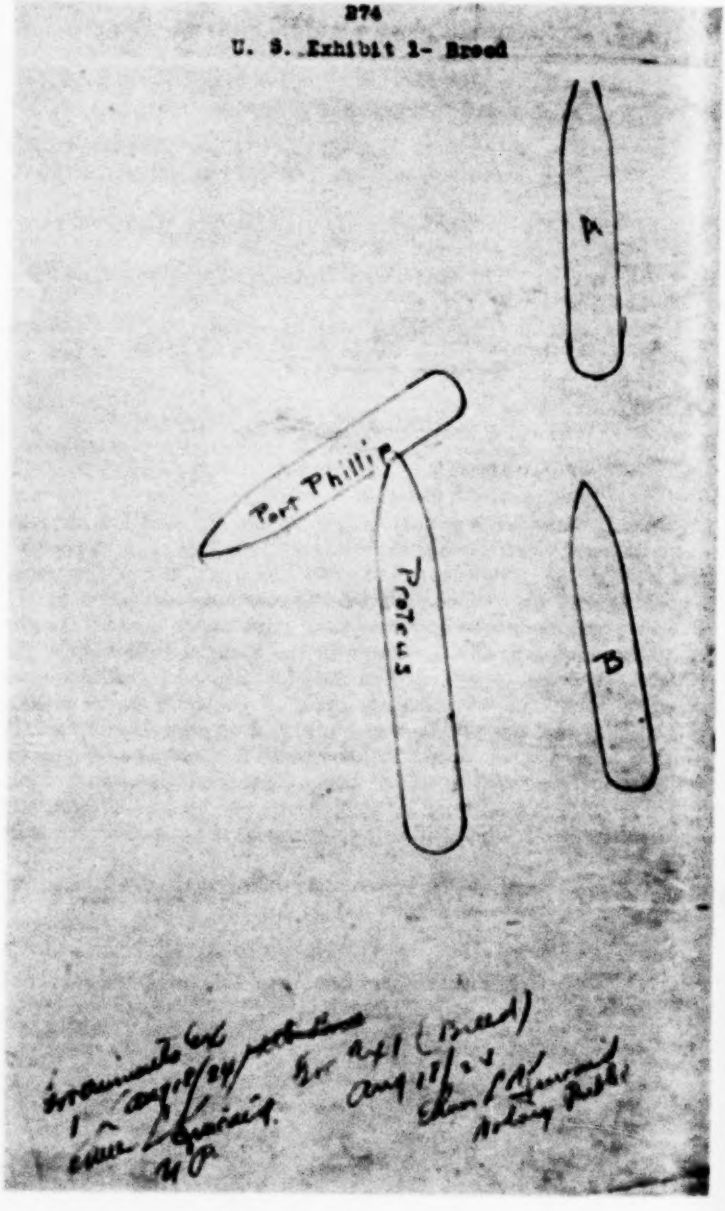
Mr. WYTHE. I haven't anything more.

273 STATE OF CALIFORNIA,
County of Los Angeles, ss:

I, Elmer L. Kincaid, a notary public in and for said Los Angeles County, do hereby certify that the witness in the foregoing deposition named was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that said deposition was taken at the time and place mentioned in the said stipulation, to-wit, at the office of the United States attorney, in the Federal Building, in the city of Los Angeles, county of Los Angeles, State of California, on Monday, the 18th day of August, 1924, at the hour of 10 o'clock a. m. and that said deposition was completed on said day; that said deposition was written down in shorthand by me and thereafter written out in typewriting under and by my direction, and, when completed, was not read over by the witness nor by him correct, and was not subscribed by him, all in pursuance to the stipulation herein contained.

In witness whereof, I have hereunto subscribed my name and affixed my seal of office this 25th day of August, 1924.

Notary Public in and for Los Angeles County, California.


274
U. S. Exhibit 1- Breed
A
Port Phillip
Proteus
B

275 *Respondent's Exhibit C.—Testimony of McGee*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, as owner of the steam collier "Proteus" and cross libel

It is stipulated that the annexed testimony of William W. McGee at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by the said William W. McGee on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or in part by either party on the trial of the said libel and cross libel and that all objections as to materiality, relevancy, and competency of the testimony are reserved.

Dated, New York, April 27, 1925.

LORD, DAY & LORD,
Proctors for Libellant.
RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross Libellant.

276 A witness called by the judge advocate entered, and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, rate, and present station?—A. William W. McGee, quartermaster 1 cl., U. S. Navy, detailed on the U. S. S. "Proteus."

Q. 2. How long have you been in the Navy?—A. About 14 months.

Q. 3. And prior to that, what did you do?—A. I was going to school.

Q. 4. Were you on the "Proteus" on October 16th, prior and at the time of the collision?—A. Yes, sir.

Q. 5. State to the court just what you observed in reference to the ships.—A. I was at the wheel. We were coming up Ambrose Channel, on the right side, east side of the channel. I was keeping close to the east side of the channel, when we saw the ship's bow come out between two other ships. We blew two blasts. Just as we blew our second one, they blew one.

Q. 6. You mean the "Port Philip"?—A. Yes. We answered with one. They blew three. Then the "Port Philip" blew five. We answered with three. That was all the whistles.

Q. 7. When the "Proteus" struck the "Port Philip," how far out into the stream did the collision occur, in reference to the line of the two vessels at anchor, from the stem of one boat to the stern of the other; between which the "Port Philip" came out?—A. I should say 150 feet.

Q. 8. The stern of the "Port Philip"?—A. It was out from the line between 100 and 200 feet, I should say.

Q. 9. What course did you maintain coming up Ambrose?

277 Did you at any time shift your course?—A. Steadied to go with the buoys, until we blew one whistle and went hard right.

Q. 10. And that brought the bow of the boat to the starboard?—A. Yes, sir; to the right.

Q. 11. Did you at any time swing the bow of your boat to port?—A. When we blew two we were rudder left, and when they blew one we changed to hard right.

Q. 12. You didn't shift your course at all?—A. No, sir; she hadn't had a chance to swing when I put her hard right.

Q. 13. At no time she was going to the left, at all?—A. No, sir.

Q. 14. First was the order to "left" and then "right." How quick was that?—A. Too fast to give an idea. Almost immediately. I didn't have it left when he said, "Hard right."

Q. 15. At no time she went to the left, at all?—A. No, sir; I know she didn't.

Q. 16. From your observation and your experience at the wheel, who would you say was at fault in this collision?

COUNSEL FOR CUNARD S. S. CO. I object to that question. I don't think the witness is qualified as an expert.

THE COURT. The witness may answer that question, and the court will weigh his opinion for what it is worth.

A. I think if the other ship would have kept going and not have stopped, we would not have hit her.

Q. 17. Did she stop?—A. She seemed to be stopped when we hit her.

Q. 18. When you hit her, how was she in the water?—A. Lying across the channel.

278 Q. 19. I mean in speed?—A. Mighty slow; almost stopped.

Examined by counsel for the Cunard S. S. Co., interested parties:

Q. 20. You entered the Navy 14 months ago?—A. About 13 months.

Q. 21. And before that had you had any experience at sea?—A. No, sir.

Q. 22. Do you claim to be an expert in these matters?—A. I couldn't say I am an expert. I should say I was qualified to handle a ship.

Q. 23. That would be under orders from the officer, or whoever was navigating?—A. Yes, sir.

Q. 24. In other words, you think you have picked up as much as a man can pick up in 14 months?—A. Yes, sir.

Q. 25. You never had any large ship, or any small vessel, yourself?—A. No, sir.

Q. 26. Never had anything to do with navigation?—A. Nothing at all.

Q. 27. I suppose you have talked this over with other people around at the time?—A. I think everybody in the crew talked it over.

Q. 28. Have you discussed it with any of the officers of the ship?—A. All were speaking about it.

Q. 29. When was that?—A. At the time.

Q. 30. Have you discussed it since?—A. Spoke about it several times.

Q. 31. When was the first time?—A. I could not say it exactly.

Q. 32. You have discussed with other officers the signals that were given from the various vessels?—A. They asked me what they were, and I told them.

Q. 33. Did you discuss the orders that were given to your engine room?—A. No, sir; but I can remember what they were.

279 Q. 34. Did they ask you whether your ship went to port, at all, after the rudder was directed to left?—A. No, sir.

Q. 35. That was not mentioned at all by anybody?—A. By Mr. Brakke, officer of the deck.

Q. 36. What did he say?—A. He asked me if we went left, and I told him, "No, sir."

Q. 37. You both remembered that the order "left rudder" was given?—A. Yes, sir; left helm.

Q. 38. You speak of left helm. You mean left rudder, do you not?—A. Yes, sir.

Q. 39. The first signal blown by either vessel was blown by what vessel, and what signal was it?—A. By the "Proteus."

Q. 40. What was it?—A. Two blasts.

Q. 41. Then that was followed by what signal?—A. One blast from the "Port Philip."

Q. 42. How long after the two was it?—A. Just as the one was blown, the second one of the two.

Q. 43. In discussing this with any of the other people of the "Proteus," has that phrase, "just as the second of our two blasts was blown," been mentioned?—A. I couldn't say to that.

Q. 44. It would be extraordinary that they have all used the same phrase. After the "Port Philip" blew the one blast, which was practically coincident with the second of your two, then did you reply with any signal?—A. One blast.

Q. 45. How long after?—A. Immediately.

Q. 46. Then did the "Port Philip" do anything?—A. She blew three blasts.

Q. 47. How long after your one was that?—A. I couldn't say.

Q. 48. I understand you didn't take the time by watch. I want your best estimate?—A. It was a matter of seconds.

280 Q. 49. Then what was the next signal from any vessel?—A. The "Port Philip."

Q. 50. What was that?—A. Five short blasts.

Q. 51. How long after the three was that?—A. Almost immediately.

Q. 52. Then what did the "Proteus" blow?—A. We answered with three blasts.

Q. 53. Who told you to put the rudder left?—A. The captain.

Q. 54. Captain Hansen?—A. Yes, sir.

Q. 55. When was that order given?—A. When we blew the two blasts.

Q. 56. And then the "Port Philip" answered with one, and the "Proteus" answered with one, and it was after the "Proteus" answered with one that the order to hard right was given?—A. Just as he said "blow one blast," it was "hard right."

Q. 57. So that the interval was sufficient for the "Port Philip" to blow the one, and the "Proteus" to blow the one, before you were given "hard right"?—A. When the captain said "blow one whistle," he said, "Rudder hard right."

Q. 58. When you got the order "hard left," you started to comply with it, did you not?—A. Started to comply.

Q. 59. And in the ordinary course of events you continued to comply with it until it was countermanded, did you not?—A. Yes, sir.

Q. 60. Did you do so on that occasion?—A. Always do so.

Q. 61. Did you see any evidence that the "Port Philip" had stopped her engines?—A. She seemed to be stopped.

Q. 62. Did you see any evidence that her engines were going astern?—A. No, sir.

281 Reexamined by the JUDGE ADVOCATE:

Q. 63. When you got the order from the captain to "hard left rudder," did you execute it?—A. Just started to execute it.

Q. 64. And then what happened, as you started?—A. I had her over as far as 25—30 is "hard right"—and the captain said "Hard right," as we blew one.

Q. 65. And held your rudder hard right until you struck?—A. Until we struck.

Q. 66. When you started to execute rudder "hard left," had she changed her course at all?—A. No, sir. We use a jackstaff on the land line, and I could see she hadn't swung at all.

Q. 67. And these orders came thick and fast, as it was?—A. Yes, sir.

Reexamined by counsel for the Cunard S. S. Co., interested parties:

Q. 68. Where was the "Port Philip," with respect to those vessels she came between, when the order "hard left" on your rudder was given?—A. Just coming out. You could just see her bow.

Q. 69. How far away from her were you then?—A. I couldn't say.

Q. 70. Give us your best judgment.—A. Several hundred yards. But I am not a very good judge of distance on the water.

Q. 71. And she had headway, then, the "Port Philip," did she not?—A. Yes, sir; she was coming out.

Q. 72. When was the order given to your engines to go astern?—A. Almost immediately.

Q. 73. And your signal of three blasts was the last of all the signals you gave, is that right?—A. Yes, sir.

282 Q. 74. Was that signal given as soon as the engines were put astern?—A. Her engines were put full astern when the "Port Philip" crossed our signals, and blew one.

Q. 75. You didn't indicate to the "Port Philip" that your engines were astern until the last signal of all that you gave, is that right?—A. Yes, sir.

Examined by the COURT:

Q. 76. You stated that the "Port Philip" had stopped. You mean she appeared to be stopped?—A. Yes, sir; she appeared to be stopped.

Q. 77. On "Exhibit No. 17" will you indicate on that about where the "Port Philip" was when you heard her sound her first whistle, and mark that with "4"?—A. (The witness marked said point with "X," and put the figure "4" above it.) The ship was nearer to "A" than on that line.

Q. 78. Did you hear any whistle from the "Port Philip" before the "Proteus" blew two whistles?—A. No, sir.

Q. 79. In your testimony you said you considered you were qualified to handle a ship. When you stated you were qualified, in your opinion, to handle a ship, you meant to steer a ship?—A. I meant to steer a ship under the captain's orders.

Q. 80. When the "Port Philip" blew her first one whistle, was she distinctly in view of the "Proteus"?—A. You could see back behind her bridge when she blew the one whistle.

Q. 81. That is the first time that you heard it?—A. Yes, sir.

Reexamined by the JUDGE ADVOCATE:

Q. 82. After the collision, did you notice anything in respect to the boat astern of the "Proteus"?—A. Yes, sir.

283 Q. 83. Tell us what you noticed?—A. This "A" ship, on Exhibit No. 17, our stern was about 75 feet from her when we backed up.

Reexamined by counsel for the Cunard S. S. Co., interested parties:

Q. 84. How long after the collision was that; did you notice?—A. When we were backing up.

Q. 85. How long after the collision was it that your stern was within 75 feet of this vessel?—A. Just as soon as we backed out of the other ship.

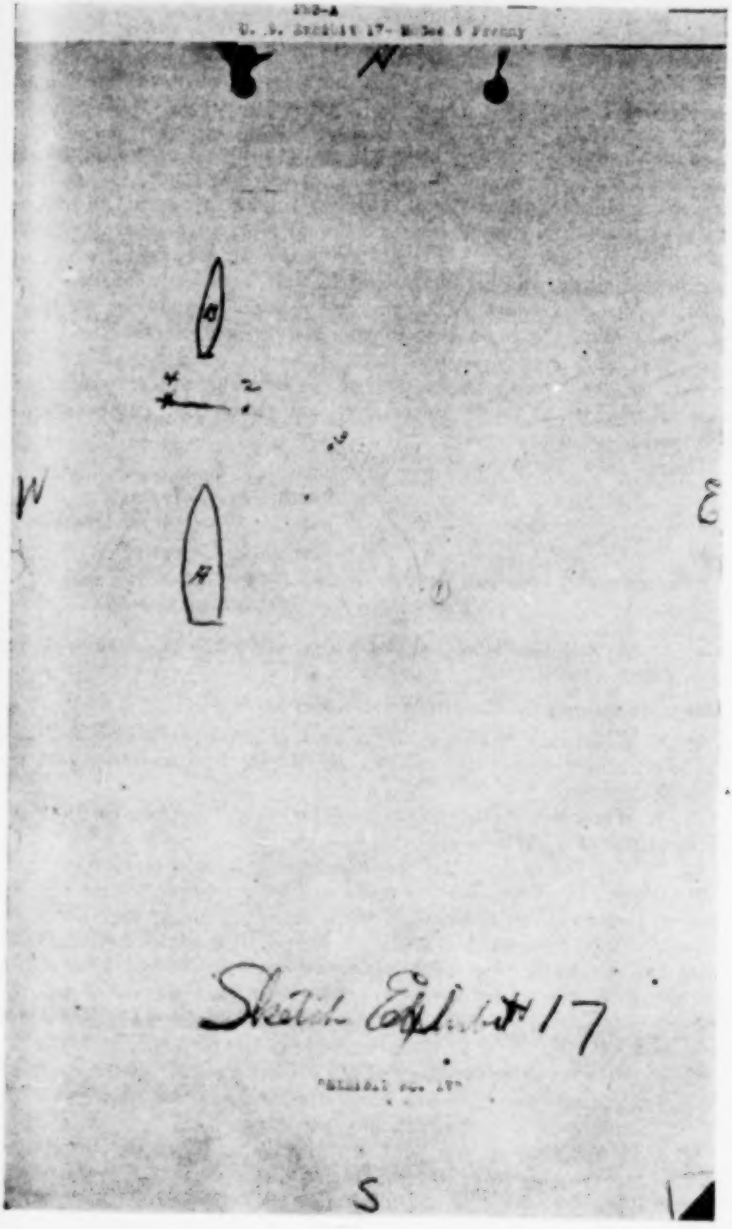
Q. 86. As you continued backing you got nearer?—A. We went ahead on the port engine, and astern on the starboard engine to swing clear of the "Port Philip" and we had to go forward to keep our stern from hitting "A."

Q. 87. After the collision, did you try to keep your bow in the hole in the "Port Philip"?—A. We stayed there for some interval.

Q. 88. Did the vessels slew around after the collision, due to the impact of the collision?—A. (The witness indicated with two lead pencils that after the collision, the impact of the blow threw the stern of the "Port Philip" to starboard, and the bow of the "Proteus" to port, and the stern to starboard. The "Port Philip" swung the most, and swung in on the "Proteus.")

(None of the parties to the inquiry desired further to examine this witness; he verified his testimony, was duly warned, and withdrew.)

283–A U. S. Exhibit 17—McGee & Prenny



284 *Respondent's Exhibit D.—Testimony of Prenny*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, as owner of the steam collier "Proteus" and cross libel

It is stipulated that the annexed testimony of Lewis Prenny at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by said Lewis Prenny on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or in part by either party on the trial of the said libel and cross libel and that all objections as to materiality, relevancy and competency of the testimony are reserved.

Dated, New York, April 27, 1925.

LORD, DAY & LORD,
Proctors for Libellant.

RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross-Libellant.

285 A witness called by the judge advocate entered, and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, rate, and present station?—A. Lewis Prenney, quartermaster 1 cl., U. S. N. R. F.; stationed on the U. S. "Proteus."

Q. 2. Were you stationed on the "Proteus" on October 16, 1918, at the time of the collision?—A. Yes, sir.

Q. 3. Tell the court what you observed in reference to coming up the harbor.—A. I was on the starboard wing of the bridge, and the chief quartermaster and myself were standing there together. We saw this ship come out. She didn't blow any whistle until she came into the channel. Our captain gave two whistles, which were answered by one, right at the second one of the two we blew. We answered with one, and she blew three. On top of the three she blew five, and we blew three to show we were going astern.

Q. 4. When you first observed the "Port Philip" coming out between the other two vessels, about how far away was your vessel?—A. I should say we were about 300 feet.

Q. 5. I mean when you first saw her?—A. When her nose came out from between those two vessels it was about a ship and a half length.

Q. 6. Take "Exhibit No. 17," which is a very rough sketch, and not drawn to scale. Take a line from the stem of "A" to the stern of "B"; how far to the westward was the stern of the "Port Phillip" when you struck?—A. I should say her stern was about 100 feet out in the channel.

286 Q. 7. Did you notice the course that you were steering when you were coming up the channel?—A. We were hugging right close to the right-hand side of the channel.

Q. 8. After the whistles were given, did you notice the course of your boat change at all?—A. I didn't pay any attention to that.

Q. 9. How long have you been in the Navy?—A. Since the 13th of June, 1917.

Q. 10. And prior to that time what were you doing?—A. Before that I was on merchant ships.

Q. 11. For how long?—A. Off and on for seven years.

Q. 12. What billet did you have in merchant ships?—A. Quartermaster.

Q. 13. Steamers or sailing ships?—A. Quartermaster on steam ships, and seaman on sails.

Examined by counsel for the Cunard S. S. Co., interested parties:

Q. 14. Did you hear any orders given to the quartermaster at the wheel?—A. No, sir; I was away over on the starboard wing of the bridge.

Q. 15. You couldn't hear from there?—A. No, sir.

Q. 16. I suppose after the collision there was some excitement?—A. I was all excited.

Q. 17. You were talking about it afterwards a good deal?—A. Yes, sir.

Q. 18. Whom have you talked to about it?—A. I was with the chief quartermaster all the time.

Q. 19. It was naturally a subject of a good deal of conversation by everybody?—A. Yes; all over the boat.

Q. 20. I suppose you all compared notes and tried to find out just how it happened?—A. Yes, sir.

287 Reexamined by the JUDGE ADVOCATE:

Q. 21. Everybody talked about the accident?—A. Everyone from the cooks down to the fireman.

(The court had no question to ask this witness.)

(None of the parties to the inquiry desired further to examine this witness; he verified his testimony, was duly warned, and withdrew.)

288 (U. S. Exhibit 17 omitted. Printed side page 283-A, ante.)

289 *Respondent's Exhibit E—Testimony of Murray*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, as owner of the steam collier "Proteus" and cross libel

It is stipulated that the annexed testimony of Patrick J. Murray at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Phillip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by said Patrick J. Murray on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or in part by either party on the trial of the said libel and cross libel and that all objections as to materiality, relevency, and competency of the testimony are reserved.

Dated, New York, April 27, 1925.

LORD, DAY & LORD,
Proctors for Libellant.

RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross-Libellant.

290 A witness called by the Judge Advocate, entered and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, rank, and present station?—A. Patrick J. Murray, lieutenant, U. S. Naval Reserve Force; chief engineer of the U. S. S. "Proteus."

Q. 2. Lieutenant, were you on the "Proteus" on October 16, 1918?—A. Yes, sir.

Q. 3. As chief engineer of the "Proteus" on that date?—A. Yes, sir.

Q. 4. Where were you stationed that day?—A. Shortly prior to the accident I was on the middle grating of the engine room, from about an hour previous to the accident until the collision.

Q. 5. Have you the engineer's log of the "Proteus"?—A. (Producing rough log sheet.) This is the rough log that we used in the engine room.

Q. 6. In that rough log sheet, at 10.10 on the port engine, the change is marked "X." What does that mean?—A. That means "stop."

Q. 7. What does three marks mean?—A. "Full astern."

Q. 8. What does 10.12 "X" mean?—That means stop.

Q. 9. 10.15 "XXI"?—A. That is full ahead.

Q. 10. 10.16 "X"?—A. That is stop.
Q. 11. 10.16½ "V"?—A. One-third ahead.
Q. 12. 10.23½?—A. Is full speed ahead.
Q. 13. 10.25?—A. One-third ahead.
Q. 14. 10.31?—A. Two-thirds ahead.
Q. 15. Now, the starboard engine 10.10?—A. Stop.
Q. 16. 10.10 again?—A. Full astern.
Q. 17. 10.13½?—A. Stop.
Q. 18. 10.15?—A. Full astern.
291 Q. 19. 10.15½?—A. Stop.
Q. 20. 10.20?—A. Full astern.
Q. 21. 10.21?—A. Stop.
Q. 22. 10.23?—A. Slow ahead, one-third ahead.
Q. 23. 10.23½?—A. Full ahead.
Q. 24. 10.25?—A. One-third ahead.
Q. 25. 10.31?—A. Two-thirds ahead.

The JUDGE ADVOCATE. I offer in evidence an extract of the engineer's rough log sheet of the U. S. S. "Proteus," covering October 16, 1918.

(Said extract was submitted to the interested parties and to the court. There being no objection, it was received in evidence and appended, copy marked "Exhibit No. 15.")

Q. 26. From your log sheet, and also the speed curve of your vessel, state the average revolutions you were making prior to the time of the collision.—A. From 7 to 8 a. m., it was 90.5; from 8 to 9 a. m., it was 74.4; from 9 to 10 a. m., she made 85.6; from 10 to 11 a. m., she made 52.4.

Q. 27. Will you give me the average revolutions from 10 o'clock, until 10.10?—A. There is nothing here from which I can give that.

Q. 28. Were you making the same average revolutions from 10 o'clock to 10.10, when you received the stop and full speed astern signal, as you were in the hour previous, from 9 to 10, namely, 85.6?—A. On or about that. We had no orders to change until we got the order to stop.

Q. 29. Through the water, what does the speed curve show she was making from 9 to 10?—A. She was making 12.5 knots.

Q. 30. It has been testified that the current, at the time in
292 question, was 2.5 knots against the ship. What speed would that give the ship over the bottom?—A. 10 knots.

Q. 31. Will you please state the maximum speed of your vessel?—A. The maximum speed is 12.5.

Q. 32. What was the maximum speed made during the year 1917?—A. That I couldn't say. I was not on the boat at the time.

Q. 33. What is the best speed made during your stay on her?—A. The best I have ever seen her make is 12.5.

Examined by counsel for the Cunard S. S. Co., interested parties:

Q. 34. By whom were these entries in the log book made?—A. By the engineers on watch: Mr. Mason and Mr. Peterson. Mr. Peterson

was down there until anywheres from 5 to 10 minutes before the collision. Mr. Mason was the officer in charge of the watch.

Q. 35. I imagine the heavy writing is Mr. Peterson's, and the light writing is Mr. Mason's.—A. Mr. Peterson had the watch from 4 a. m. to 8 a. m., and that sheet takes in from 12 o'clock one night to 12 the next night.

Q. 36. These entries "full ahead," at 6.32, are in the heavy writing which appears to be Mr. Peterson's, and then they carry on with Mason's down to "started the pumps on No. 3 inner bottom at 10.25 a. m.," and then it follows, apparently, with Mr. Peterson's heavy writing, "Answering bells as per telegraph from bridge. Ship struck at 10.13." That entry seems to be out of its chronological order.—A. Mr. Peterson was on the platform at the time the ship struck. Naturally, whoever was at the desk logged the orders. It might have been either one. Mr. Peterson is senior engineer.

293 Q. 37. It looks to me as though the entry for the port engine at 10.10 had formerly been 10.11, or something later than 10.10, and had been either erased or written over. Does it look so to you?—A. I don't know anything about that.

Q. 38. You didn't have anything to do with making these entries?—A. No, sir.

Q. 39. When was your clock in the engine room compared with the bridge clock?—A. As near as I can figure out, about 8 o'clock that morning.

Q. 40. And you had nothing to do with that?—A. No, sir.

(There being no further questions to ask this witness, he verified his testimony, was duly warned, and withdrew.)

U. S. Exhibit No. 15—Murray

OCTOBER 16, 1918.

PORT ENGINE		STARBOARD ENGINE	
	A. m.		A. m.
10.10	Stop.	10.10	Stop.
10.10	Full astern.	10.10	Full astern.
10.12	Stop.	10.13½	Stop.
10.15	Full speed ahead.	10.15	Full astern.
10.16	Stop.	10.15½	Stop.
10.23½	Full speed ahead.	10.20	Full astern.
10.16½	⅓ ahead.	10.21	Stop.
10.25	⅓ ahead.	10.23	⅓ ahead.
10.31	⅔ ahead.	10.23½	Full ahead.
		10.25	⅓ ahead.
		10.31	⅔ ahead.

294 *Respondent's Exhibit F.—Testimony of Peterson*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, as owner of the steam collier "Proteus" and cross libel

It is stipulated that the annexed testimony of Harold C. Peterson at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by said Harold C. Peterson on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or in part by either party on the trial of the said libel and cross libel and that all objections as to materiality, relevancy, and competency of the testimony are reserved.

Dated, New York, April 27, 1925.

LORD, DAY & LORD,
Proctors for Libellant.

295 RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross-Libellant.

A witness called by the judge advocate entered, and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, rank, and present station?—A. Harold C. Peterson, lieutenant (junior grade), U. S. Naval Reserve Force; engineering duty on board the U. S. S. "Proteus."

Q. 2. Were you on the "Proteus" on October 16th, 1918?—A. Yes, sir.

Q. 3. What watch did you have?—A. 4 a. m. to 8 a. m.

Q. 4. Who had the watch from 8 to 12?—A. Mr. Mason.

Q. 5. Where were you at the time of the accident?—A. I was in the engine room. I was on the working platform, right down at the throttle.

Q. 6. You were on duty at the time?—A. I came off watch at 8 o'clock, and happened to go down below, coming into port.

Q. 7. You went back again on account of coming into port?—A. Yes, sir.

Q. 8. What entries have you made in the rough log which I show you, and which I will mark "Exhibit B for identification"?—A. I made all the entries from 4 to 8 a. m. Referring to an entry
296 in the 8 to 12 watch, reading, "Answering bells as per telegraph from bridge. Ship struck at 10.13." I made that also.

Q. 9. What time did you make that entry?—A. Same morning. I came down below just before she struck. I was taking the bells, and put down that entry.

Q. 10. Where did you get the time from?—A. From the clock on the desk.

Q. 11. How comes it that that entry is made after an entry in the handwriting of Mr. Mason?—A. He has the 8 to 12 watch, and he enters what is going on that watch, and I naturally write down at the bottom.

Q. 12. He puts his on top and you put yours on the bottom. But the fact that 10.13 is after an entry at 10.25 has no significance?—A. No, sir.

Examined by counsel for the Cunard S. S. Co., interested parties:

Q. 13. Just because he omitted to make it, you made it?—A. Yes, sir.

Examined by the COURT:

Q. 14. Were you actually in the engine room, and making the entries at 10.13?—A. Yes, sir.

Reexamined by the JUDGE ADVOCATE:

Q. 15. In whose handwriting are the figures of the records of signals and changes in revolutions?—A. On the port and starboard engines, 10.10, the first one, and the second 10.10 were made by Sacco, engineman 1 cl.

297 Q. 16. Who made the entries at 10.12?—A. I took all of them on both engines after that, down to 10.25, and then a yeoman took the rest of them.

Q. 17. I show you an entry on "Exhibit B for identification" at 10.10 on the starboard engine. Whose handwriting is that?—A. That is Sacco's.

Q. 18. Who is the 10.13½ entry by?—A. That is by me.

Q. 19. And that at 10.15?—A. That is by me.

Q. 20. Who is that at 10.21?—A. That is by me.

Q. 21. I notice that the black printed line dividing the space there between "Time" and "Change" is rubbed out entirely. Has that any significance?—A. It has none at all. It is rubbed out, or it is wet grease on there.

Q. 22. Has it any significance?—A. None whatever.

Reexamined by counsel for the Cunard S. S. Co., interested parties:

Q. 23. The only entries in that portion of the log having to do with the movements of the port and starboard engines which were made by Sacco were the entries for 10.10 on both engines?—A. Yes, sir.

Q. 24. How did he come to make those entries?—A. Just as soon as they got the bells, he goes to the desk and takes the bells; then the other engineman on watch takes the watch. Two engineers were right at the throttle when they got those bells at 10.10.

Q. 25. There has been some comment that there appeared to be some erasures, or it looked as though the page had been erased at the second entry on the starboard engine for 10.10, and that the entry for 10.13½ for the starboard engine had also been erased. At the
298 time of making the entry 10.15½, was there any erasure on the page?—A. No, sir.

Q. 26. Has there been any since?—A. No, sir.

Q. 27. Did you make any erasure of any sort?—A. No, sir.

Q. 28. Was there any comparison made of the clock in the engine room with that on the bridge, to your knowledge, that morning?—A. Not that I know of.

Q. 29. When was the last comparison made that you know of?—A. It was made at 2.50 a. m., on October 16, 1918.

Q. 30. That would indicate the clock was compared with the bridge clock at that time?—A. Yes, sir.

Reexamined by the COURT:

Q. 31. You check up the clock sometimes by the bells from the deck?—A. No, sir. The quartermaster generally telephones down from the engineer's room.

(None of the parties to the inquiry desired further to examine this witness; the witness verified his testimony, was duly warned, and withdrew.)

299 *Respondent's Exhibit G.—Testimony of Mason*

United States District Court, Eastern District of New York.

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, as owner of the steam collier "Proteus" and cross libel.

It is stipulated that the annexed testimony of Everett H. Mason at a court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which testimony was given by said Everett H. Mason on October 23rd, 1918, before said court, be considered a deposition taken on behalf of the libellant de bene esse in the above entitled libel and cross libel, and that said deposition may be read in evidence in whole or in part by either party on the trial of the said libel and cross libel and that all objections as to materiality, relevancy and competency of the testimony are reserved.

Dated, New York, April 27, 1925.

LORD, DAY & LORD,
Proctors for Libellant.

RALPH C. GREENE,
United States Attorney for the Eastern District of New York,
Proctor for Respondent and Cross Libellant.

300 A witness called by the judge advocate entered, and was duly sworn.

Examined by the JUDGE ADVOCATE:

Q. 1. What is your name, rank, and present station?—A. Everett H. Mason, ensign, U. S. Naval Reserve Force; U. S. S. "Proteus."

Q. 2. Were you on the "Proteus" on Oct. 16, 1918?—A. Yes, sir.

Q. 3. State where you were, just before the collision occurred?—A. I was on watch in the engine room.

Q. 4. What time did you go on watch?—A. 8 in the morning.

Q. 5. You had the 8 to 12 watch?—A. Yes, sir.

Q. 6. I hand you rough log sheet, marked "Exhibit B for identification" and ask you if you made any entries on that?—A. Yes, sir.

Q. 7. Did you make all the entries in that block, from 8 to 12 a. m., except the words, "Answering bells as per telegraph from bridge. Ship struck at 10.13"?—A. Yes, sir.

Q. 8. Who made the latter entry?—A. First assistant engineer.

Q. 9. How came he to make it, and not you?—A. I was handling the throttle at the time; standing by the throttle, and he was looking over the log sheet for me.

Q. 10. And that fact that it was put at the bottom, after your entries at 10.25, has no significance?—A. He put this down after the bells here. We got word from the bridge, and were answering the telegraph right along. He was busy taking the bells, and standing by for bells. It was after I put this down that he put it in.

301 He was handling the bells at the time, and then the entry was made after mine.

Q. 11. In the columns "Record of signals," and "Changes in revolutions," port and starboard engines, did you make any entries there?—A. Yes, sir.

Q. 12. Which ones?—A. Up to 10.12 on the port and starboard, both.

Q. 13. Whose handwriting is that on the port engine, 10.10 and 10.10?—A. That is mine.

Q. 14. On the starboard engine, whose handwriting is that, 10.10 and 10.10?—A. That is mine.

Q. 15. How about 10.13½?—A. That is Mr. Peterson's.

Q. 16. Did Sacco make the entries at 10.10?—A. He made some of the other ones. I put those down myself.

Q. 17. You recognize those figures as in your own handwriting?—A. Yes, sir.

Q. 18. On the port engine, the second 10.10, has that been changed since the original entry?—A. No, sir.

Q. 19. On the starboard, the second 10.10, has that been changed since the entry was originally made?—A. No, sir.

Q 20. There appears, right beside the 10.10 on the starboard, on the black printed line between "Time of changes" and "Change," it appears to be rubbed out. Has that any significance whatever?—A. No, sir.

Q. 21. A good many times you will make a slip with the pencil, and you will just scratch it out and put it in correctly?—A. Yes, sir.

Q. 22. But 10.10 was the correct time?—A. Yes, sir.

Q. 23. Also, it has been called to the attention of the court
302 that on the port engine, the entry at 10.10 appears to have originally been 10.11 and was written over to read 10.10. Has any change in that been made since it was originally entered?—A. No, sir.

Q. 24. The entry of 10.10 is correct?—A. Yes, sir.

Examined by counsel for the Cunard S. S. Co., interested parties:

Q. 25. It looks as though you had started to write 10.11, and then reconsidered it and correct it to 10.10?—A. There was no change.

(None of the parties to the inquiry desired further to examine this witness; he verified his testimony, was duly warned, and withdrew.)

303 *Notes re libellant's exhibits 1 to 10, inclusive*

LIBELLANT'S EXHIBT 1

Testimony of Thomas A. Leinster and Stipulation (printed at pp. 180–188).

LIBELLANT'S EXHIBIT 2

Deposition of Louis Spaniol with exhibits. (printed at pp. 188–211, except chart marked as exhibit thereto, not printed—see Stipulation, p. 357).

LIBELLANT'S EXHIBIT 3

Testimony of George Gormly and Stipulation (printed at pp. 212–214).

LIBELLANT'S EXHIBIT 4

Photograph (not printed—see Stipulation, p. 357).

LIBELLANT'S EXHIBIT 5

Photograph (not printed—see Stipulation, p. 357).

LIBELLANT'S EXHIBIT 6

Photograph (not printed—see Stipulation, p. 357).

304 LIBELLANT'S EXHIBIT 7

Photograph (not printed—see Stipulation, p. 357).

LIBELLANT'S EXHIBIT 8

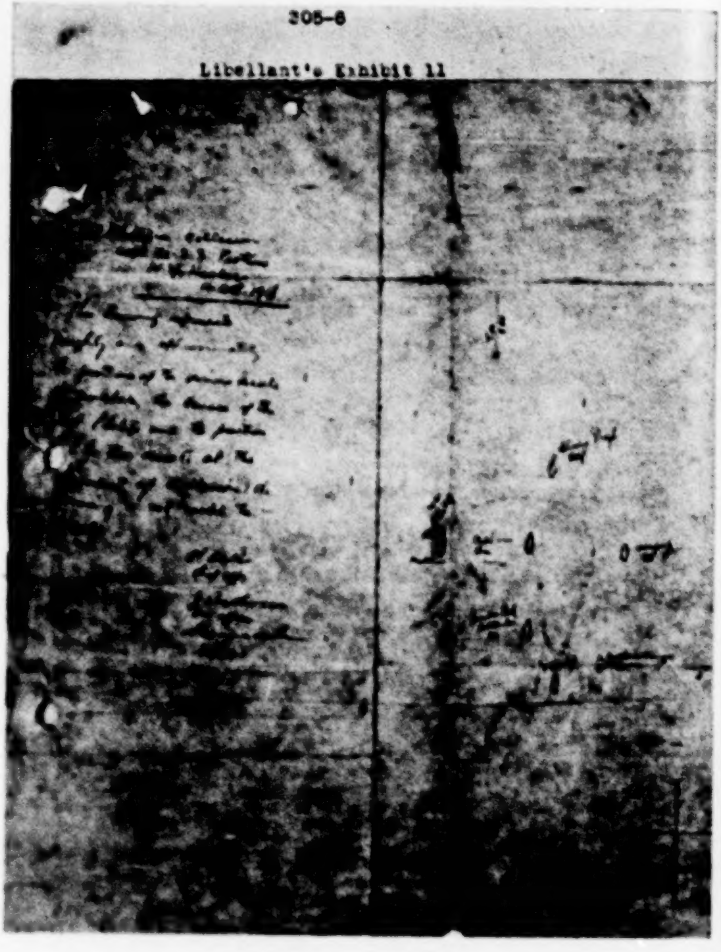
Photograph (not printed—see Stipulation, p. 357).

LIBELLANT'S EXHIBIT 9

Photograph (not printed—see Stipulation, p. 357).

LIBELLANT'S EXHIBIT 10

Chart (not printed—see Stipulation, p. 357).


205-6
Libellant's Exhibit 11

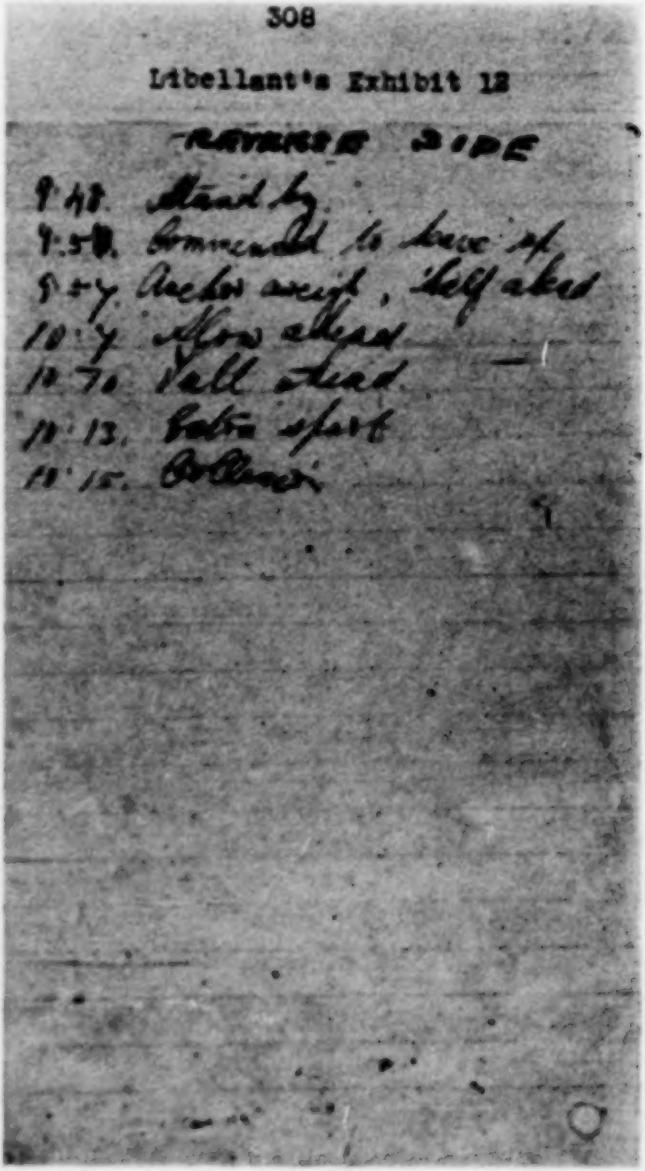
307

Libellant's Exhibit 12

Exhibit 4

Port Lifeboat

G. S. Hall. R. J. S. Anderson.
J. W. P. Cosby. G. H. Wilkes.
F. G. Hardy. G. B. Rosser.
J. Johansen J. Kavanagh.
P. Hansen. Anderson
Duffy. Donlinson.
C. Mayer. Connolly.
R. Ballard Hughes.
J. Garrett Acton.
W. Clellon Ayres
M. Price. Wytson
J. Weaver 9 40 Handy 9 45 Dunnock
J. Jones. 9 57 Waugh 10 04 1
R. Taylor. 10 10 111 10 13 111 111
C. Lucken
J. Kaufmann
Gregg.



308

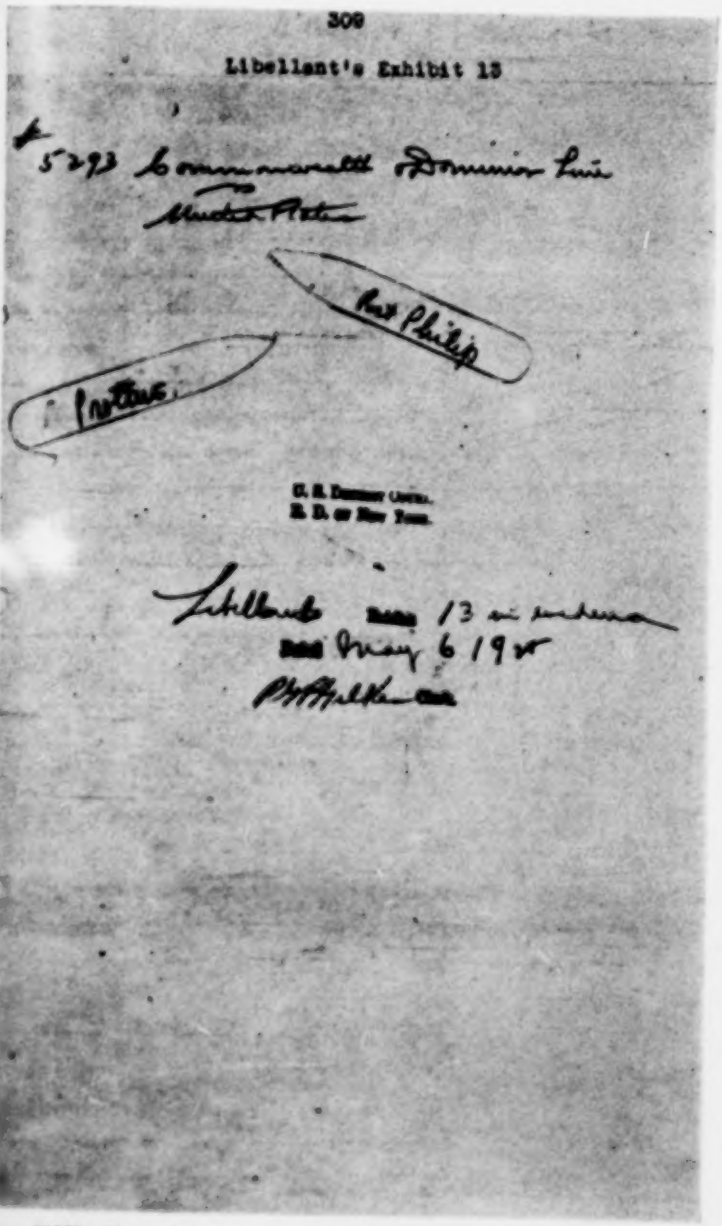
Libellant's Exhibit 12

REVERSE SIDE

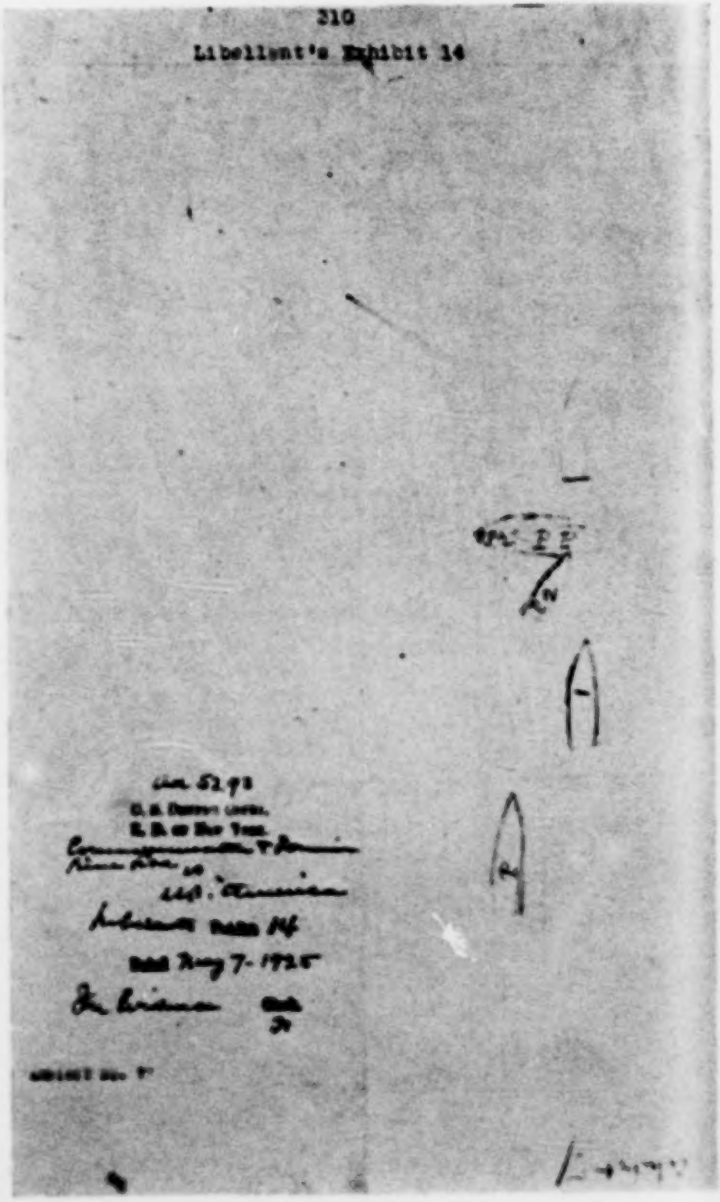
9:48. Stood by.
9:58. Commenced to heave up
9:59. Anchor aweigh, Hove aboard
10:7 Hove ahead
10:10 Full ahead
10:13. Port effort
10:15. Ahead

309

Libellant's Exhibit 13



81555—28——12


310
Libellant's Exhibit 14
Dated May 7- 1925

311 *Libellant's Exhibit 15*

United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against United States of America, and cross suit, respondent

SIR: Please take notice that you are required to produce upon the trial of this cause the following described books, documents, and papers:

(1) The log book of U. S. S. "Proteus" for October 16th, 1918.

(2) The scrap log book of U. S. S. "Proteus" for October 16th, 1918.

(3) The engine-room log book of U. S. S. "Proteus" for October 16th, 1918.

(4) The engineer's rough log of U. S. S. "Proteus" for October 16th, 1918.

(5) The engine-room movement book of U. S. S. "Proteus" for October 16th, 1918.

(6) Any and all other log books, writings, memorandum books, note books, or other written records of U. S. S. "Proteus" or of any of her officers, for October 16th, 1918, in any way relating to the navigation of said vessel on said day, or to the movements of
312 her engines, or bearing in any way upon the collision between U. S. S. "Proteus" and the steamship "Port Philip" on the said day.

(7) Each and every exhibit marked in evidence or for identification before the naval court of inquiry convened at the navy yard, New York, by order of the commandant, third naval district, to inquire into the circumstances attending the sinking of the British merchant steamship "Port Philip" by the U. S. S. "Proteus" on October 16th, 1918, which court convened on October 21st, 1918, and subsequent days, together with the transcript of the testimony given before said court.

(8) All other documents, notes, log books, papers, books, letters, and writings whatsoever in your possession or control or in the control of the United States of America in any way relating to the questions at issue in this cause.

In default of the production of the foregoing, secondary evidence thereof will be offered upon said trial.

Dated, New York, May 2nd, 1925.

Yours, &c.,

LORD, DAY & LORD,
Proctors for The Commonwealth & Dominion Line (Ltd.),
25 Broadway, New York City.

313 To RALPH C. GREENE, Esq.,
U. S. Attorney for the Eastern District of New York,
Proctor for the United States of America.

Office & P. O. address, Room 700, 45 Broadway, Borough of Manhattan, New York City.

Libellant's Exhibit 16

U. S. S. "PROTEUS," *16 October, 1918.*

8–12 Watch

8.44 Stopped engines to take aboard paravanes.
8.56 Full ahead.
9.07 Ambrose L. V. abeam.
9.20 Entered Ambrose channel, commanding officer conning.
9.54 West Bank Lt. House abeam.
10.02 Swinburn Lt. House abeam.
10.09 Saw steamer "Port Philips," English, come around stern of American steamer "Cape Romain," could not see steamer "Port Philips" from U. S. S. "Proteus," until she was well in channel, as there was a steamer anchored just astern of "Cape Romain," and steamer "Port Philips" came from between steamer "Cape Romain" and steamer laying astern of her.
314 10.10 Steamer "Proteus" gave two whistles, just as the "Port Philips" gave one. The "Proteus" then answered with one & threw her hard over to the right, at same time.
10.10 Stopped and reversed both engines to full astern, giving three whistles at the time.
10.12 Stopped port engine; starboard engine going full astern.
10.13 Str. "Proteus" struck Str. "Port Philips" on port side abaft the quarter.
10.13.5 Stopped starboard engine.
10.14 Commanding officer asked and prepared to give assistance to other steamer.
10.15 Full ahead on port engine, and full astern on starboard engine.
10.15.5 Stopped starboard engine.
10.16 Stopped port engine.
10.16 Clear of steamer "Port Philips."
10.16.5 One-third ahead on port engine.
10.20 Full astern on starboard engine.
10.20 Engines working at various speeds ahead and astern in order to keep clear of other ships that were laying at anchor. U. S. S. "Proteus" stood by until other assistance came.
10.24 U. S. S. "Proteus" proceeded on way at various speeds, steamer "Port Philips" steaming ahead to get out of channel.

10.24 Str. "Port Philips" sunk stern first on west side of channel, off Gravesend anchorage.[1]

315 10.45 Passed thru net at narrows.

11.00 Boarding officer came aboard from guard boat, proceeded toward anchorage off Liberty.

11.10 Boarding officer left ship.

12.10 Dropped anchor off Bedloes Island 60 fathom on port anchor. Statue of Liberty 316° true. Castle Williams 37° true. Gas buoy 86° true.

12.40 Draft aft 30 ft.

WILLIAM WALLACE,
Ensign, U. S. N. R. F.

316 *Notes re respondent's Exhibits A to H, inclusive*

RESPONDENT'S EXHIBIT A

Deposition of William Wallace with exhibits thereto, as follows: U. S. Exhibit 1—Diagram; U. S. Exhibit 2—Certified copy of log; Libellant's Exhibit 1—Notice to produce; Libellant's Exhibits 2, 3, 4, and 5, photographs, not printed. See stipulation, page 357 (printed at pp. 215–250).

RESPONDENT'S EXHIBIT B

Deposition of George R. Breed with exhibit thereto (printed at pp. 250–274).

RESPONDENT'S EXHIBIT C

Testimony of William W. McGee and stipulation with exhibit thereto (printed at pp. 275–283a).

RESPONDENT'S EXHIBIT D

Testimony of Lewis Prenny and stipulation (printed at pp. 284–288).

RESPONDENT'S EXHIBIT E

Testimony of Patrick J. Murray and stipulation with exhibit thereto (printed at pp. 289–294).

317 RESPONDENT'S EXHIBIT F

Testimony of Harold C. Peterson and stipulation (printed at pp. 294–298).

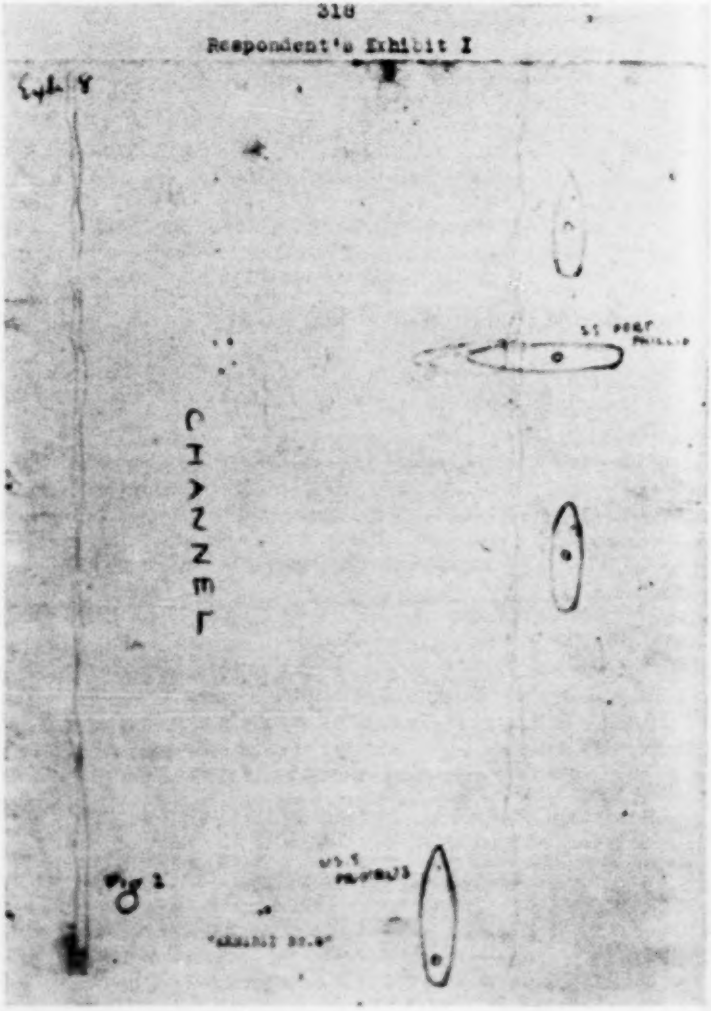
RESPONDENT'S EXHIBIT G

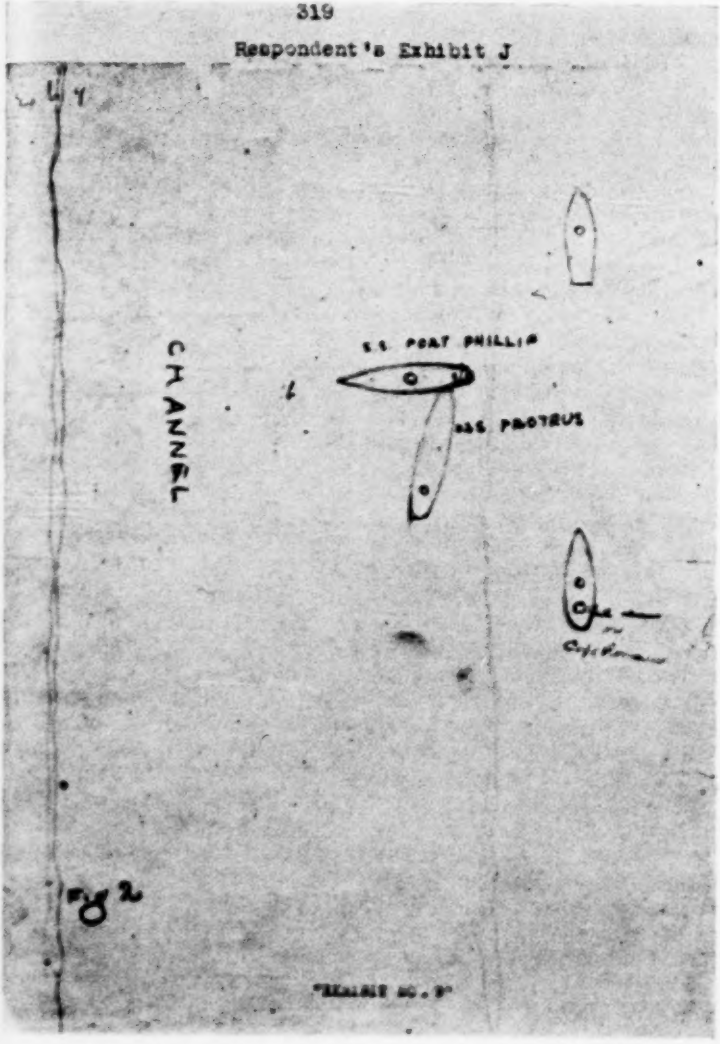
Testimony of Everett H. Mason and stipulation (printed at pp. 299–302).

RESPONDENT'S EXHIBIT H

Chart (not printed, see Stipulation, p. 357).

[1] Collision took place on following compass bearing: Hoffman Is. W. N. W. Ft. Wadsworth N. N. W.


316
Respondent's Exhibit I


319
Respondent's Exhibit J
CHANNEL
S.S. BOAT PHILLIP
S.S. PROTEUS
Fig 2

320 *Respondent's Exhibit K*

J.F.S. III.
209678

JFS-af.

DEPARTMENT OF JUSTICE,
Washington, D. C., May 1, 1925.

C. E. WYTHE, Esq.,
Office of the U. S. Attorney,
45 Broadway, New York City, N. Y.

U. S. S. "Proteus"—S. S. "Port Philip" collision

SIR: Referring to your letter of April 28, 1925, we are sending you under separate cover by special delivery the official engine room log of the U. S. S. "Proteus" covering the period from January 1, 1917, to December 31, 1919, and the official deck log of the same vessel covering the period from January 1, 1918, to December 31, 1918.

We ascertained from Commander Bowman that a representative of Lord, Day & Lord called upon him a short time ago and asked to inspect the log books. He was advised that as the case was in litigation the request for the inspection of the books should be made through the United States attorney. He did tell him that the engine room log was stored in Washington. However, he did not have reference to the rough log but to the official log which is sent you. A diligent search has been made for the rough engine log but it can not be located. As early as the latter part of 1923 a special request
321 was made to locate the rough logs, as the "Proteus" was then in commission. Although a diligent search was then made, the rough logs could not be located. We are asking the Navy to continue their search in the hope that if it is possible to have them located they will be available for you during the course of the trial.

We are also having Commander Bowman submit a report of his conference with counsel for the "Port Philip" to the Judge Advocate General of the Navy and we will forward this report to you not later than to-morrow morning so that you will have it available when the case is called on Monday morning.

The department considers this case a very important one, and we hope that all available testimony will be fully presented to the court and a favorable decision secured. Please let us know if we can do anything further for you here.

Kindly acknowledge receipt of these log books.

Respectfully,
For the Attorney General:

IRA LLOYD LETTS,
Assistant Attorney General.

322 AC9/L9 (10-31 Yr)

NAVY DEPARTMENT,
BUREAU OF ENGINEERING,
Washington, D. C., 1 May, 1925.

From: Bureau of Engineering.
To: Judge Advocate General.
Subject: U. S. S. "Proteus"—Engineroom log of, for 16 October, 1918. ("Proteus"—S. S. "Port Philip" collision.)
References: (a) Department of Justice letter No. 209678 of 27 April to Secretary of the Navy (S. O. File No. 26255–625:15) (copy attached).
(b) Bureau of Engineering letter to U. S. S. "Proteus" AC9/L9 (10–31 M) of 3 November 1923 (copy attached).
(c) "Proteus" letter to Judge Advocate General No. 35–19 of 6 November 1923 (copy attached).
(d) "Proteus" letter to Judge Advocate General No. 35–19 of 20 November 1923 (copy attached).
(e) Smooth Engine-room log of U. S. S. "Proteus" (16 October 1918).
(f) Your letter No. 26255–625:16 M of 1 May 1925.

1. About 20 April, 1925, a Mr. Mitchell, purporting to be from the Congressional Information Bureau and speaking for the representatives of the S. S. "Port Philip," came to Lieut. Comdr.
323 M. C. Bowman, custodian of engineering logs and asked to see the official engineering log of the U. S. S. "Proteus" for 16 October, 1918. He was informed that the official log was in store in the Washington Navy Yard under the custody of this bureau and that an order of the court or the consent of the U. S. Attorney in the case was necessary before its production for inspection.

2. On 28 April, reference (a) was transmitted to the bureau for the information of Lieut. Comdr. Bowman. From this letter, it was learned that the rough log sheet of 16 October, 1918, was desired instead of the official log. It is explained that this rough log is a loose sheet devised for rough entries that are daily copied onto a smooth sheet, which, when signed daily by the engineer officer and monthly by the commanding officer, becomes the legal engineering record of the ship. The original of this smooth record is transmitted quarterly to the Bureau of Engineering for file and a signed copy retained on board the ship during its commission. It was to this smooth record that Lieut. Comdr. Bowman referred. The rough sheets are not required to be preserved and are preserved only on the volition of the particular engineer officer.

3. At the request of the Judge Advocate General of the Navy, the Bureau of Engineering, in reference (b), requested the commanding officer of the "Proteus" to forward the rough engine log and the bell book of the 16th October, 1918, to the Judge Advocate General's office. In references (c) and (d) the commanding officer of the

"Proteus" states and affirms his inability to find the above
324 mentioned records. From this correspondence, the bureau believes that the rough log sheet did not then and does not now exist.

4. However, realizing the importance of the log sheet to the case, every effort has been made to locate it. The "Proteus" went out of commission on 25 March, 1924, at which time all records were boxed up and shipped from the naval operating base at Hampton Roads, Va., to the Historical section of the Navy Department. The records of the historical section fail to show any trace of the log in question and the whereabouts of the box of records is unknown.

5. The official log of the "Proteus" of the date 16 October, 1918, in the 8 a. m. to noon watch contains the following allusion to a collision, quote * * * ship struck at 10.13, unquote. This log is forwarded herewith with the request that it be returned to this bureau immediately it has served its purpose.

A. C. WRENN,
Acting Chief of Bureau.

Copy of Reference (A)

ILL WCS
209678

DEPARTMENT OF JUSTICE,
Washington, D. C., April 27, 1925.

The honorable the SECRETARY OF THE NAVY.

U. S. S. "Proteus"—S. S. "Port Philip" collision

325 SIR: I am enclosing herewith photostatic copy of letter dated April 24, 1925, which has been received from C. E. Wythe, Esq., special assistant to the United States attorney, 45 Broadway, New York City. In this letter Mr. Wythe advises that proctors for the "Port Philip" have at various times upon the taking of depositions demanded the production of the rough engine room log of the "Proteus," which was produced and marked for identification at the Naval inquiry. Mr. Wythe advises that inquiries were made of your department for this log and that he was informed that the log could not be found.

Proctors for the "Port Philip" have furnished information to Mr. Wythe to the effect that the log book in question is in the custody of the Bureau of Engineering, Navy Department, and is stored at the United States Navy Yard in Washington. This information was given as coming directly from Commander Bowman, U. S. Navy, who is in charge of the files of the engineers' logs.

It is requested that this log be obtained from Commander Bowman and forwarded to this department in order that we may send

it to Mr. Wythe for use at the trial. In the event that the foregoing information as to the whereabouts of this log is erroneous, it is believed advisable to obtain an affidavit from Commander Bowman to that effect stating in detail the extent of his search for the log in question.

As the log or the affidavit should be in the hands of Mr. Wythe on or before Monday, May 4, in order that it may be used at the trial, it is requested that this matter be given preferred attention, and if the log is located we will appreciate your sending it to
326 us by special messenger. In the event the log is not found, it is requested that the affidavit be forwarded to us in the same manner.

Respectfully,

For the Attorney General:

(S) HERMAN J. GALLOWAY,
Assistant Attorney General.

Certified to be a true copy.
M. C. BOWMAN,
Lt. Comdr. U. S. Navy.

Copy of Reference (B)

AC9/L9 (10-31 M)

NAVY DEPARTMENT,
BUREAU OF ENGINEERING,
Washington, D. C., 3 November, 1923.

From: Bureau of Engineering.
To: Commanding officer, U.S.S. "Proteus," Navy yard, Norfolk, Va.
Subject: The Judge Advocate General of the Navy—Request for engine-room log and bell book covering date of 16 October, 1918; U. S. S. "Proteus."
Reference: (*a*) Judge Advocate General's letter No. 26255-625:7 M, dated October, 1923, to Bu. Eng.
Inclosure: One—copy of reference (a).

1. In accordance with the request contained in reference (a),
327 copy of which is inclosed herewith, the bureau requests that the rough engine-room log and the bell book of the engineers of the U. S. S. "Proteus" covering the date of the collision of that vessel and the S. S. "Port Philip" in New York Harbor on 16 October, 1918, be forwarded to the Judge Advocate General of the Navy as soon as possible.

(S) A. C. WRENN,
Acting Chief of Bureau.

Certified to be a true copy.
M. C. BOWMAN,
Lt. Comdr. U. S. Navy.

[First Indorsement]

35-19 RBH:C

UNITED STATES SCOUTING FLEET TRAIN,
U. S. S. "PROTEUS,"
Navy Yard, Norfolk, Va., 6 November, 1923.

From: Commanding officer.
To: Judge Advocate General.
Subject: Request for engine-room log and bell book covering date of 16 October, 1918; U. S. S. "Proteus."
Enclosure: (1) Copy of engine-room log, U. S. S. "Proteus," 13, 14, 15, 16 October, 1918, pages 8 and 9.

1. Forwarded. The above enclosure is the only record
328 that can be found on board pertaining to the collision on 16 October, 1918. No copies of the deck log can be found; the original probably is on file in the Bureau of Navigation.

2. Return of the above enclosure is requested.

R. B. MAMMES.

Copy to: Bu. Eng.
Certified to be a true copy.

M. C. BOWMAN,
Lt. Cmdr. U. S. Navy.

35-19 RBH:C

UNITED STATES SCOUTING FLEET TRAIN,
U. S. S. "PROTEUS,"
Navy Yard, Norfolk, Va., 20 November, 1923.

From: Commanding officer.
To: The Judge Advocate General.
Subject: Collision between the U. S. S. "Proteus" and the S. S. "Port Philip," October 16, 1918.
Reference: (a) Your file 26255-625:10 M of 11/15/23.

1. A thorough search has been made and no further records on the subject matter can be found on board.

R. B. HAMMES.

Certified to be a true copy.

M. C. BOWMAN,
Lt. Comdr. U. S. Navy.

329 In United States District Court, Eastern District of New York

Commonwealth & Dominion Line (Ltd.), libellant, against the United States of America, respondent

Affidavit and Order to Show Cause

On the annexed affidavit of Allan B. A. Bradley, verified the 28th day of April, 1925, let the respondent herein show cause before me at Brooklyn post office building, on Friday, May 1st, 1925, at 10.30 a. m., why an order should not issue directing the respondent,

and the United States Navy Department to produce on the trial of this cause the original engineer's rough log sheet of the U. S. S. "Proteus" for October 16th, 1918, marked "Exhibit B for identification," at the naval court of inquiry referred to in the affidavit attached hereto, and it is further

Ordered that service of a copy of this order and the annexed affidavit of Allan B. A. Bradley on or before six o'clock on the 30th day of April, 1925, on Ralph C. Green, United States attorney for the Eastern District of New York shall be deemed sufficient service hereof.

Dated, Brooklyn, N. Y., April 30, 1925.

MARCUS CAMPBELL,
U. S. D. J.

[Title omitted].

STATE OF NEW YORK,
County of New York, ss:

Allan B. A. Bradley, being duly sworn, says:

1. I am an attorney at law and proctor in admiralty and a member of the firm of Lord, Day & Lord, proctors for the libellant in this libel. I am in charge of this case for libellant.

2. The libel is brought pursuant to a special act of Congress to recover damages arising out of the sinking of the steamship "Port Phillip," owned by the libellant, by the U. S. S. "Proteus," owned by the respondent, on October 16, 1918, in lower New York Harbor.

3. On October 21, 1918, and subsequent days, a naval court of inquiry was held at the Brooklyn Navy Yard to inquire into the circumstances attending said collision and sinking. I attended at said naval court of inquiry as counsel for the owners of the "Port Phillip" and have in my possession a transcript of the record of said inquiry, together with copies of the exhibits.

331 4. Among the witnesses who testified at said inquiry were Patrick J. Murray, chief engineer; Harold C. Peterson, assistant engineer, and Everett H. Mason, assistant engineer, all of U. S. S. "Proteus." At said inquiry the engineer's rough log sheet of the "Proteus" for October 16, 1918, the date of the collision, was produced and marked "Exhibit B for identification" (p. 184 of minutes of naval court of inquiry). An extract of said engineer's rough log sheet of U. S. S. "Proteus" covering October 16, 1918, was offered in evidence by the judge advocate and marked "Exhibit No. 15" (minutes of naval court of inquiry, p. 180).

5. On the examination of these witnesses questions were asked them relative to the entries in said original rough log sheet and relative to what appeared to be erasures and alterations therein.

6. By stipulation in this libel between the parties hereto, it has been agreed that the testimony of said chief engineer and assistant engineers of the U. S. S. "Proteus" may be considered depositions in this case and may be used as such by either party at the trial

hereof. The testimony of these witnesses relative to said original engineer's log sheet will be meaningless unless said original rough log sheet is produced in court at the trial of this case. I have from time to time requested the U. S. Attorney to produce the same but he has not yet been able to assure me that it can be produced. At my request the Congressional Information Bureau at Washington, D. C., conducted an investigation as to the whereabouts of said original engineer's rough log sheet and I annex hereto copies of letters from said Congressional Information Bureau dated,
332 respectively, the 22nd and 23rd April, 1925, from which it appears that said original engineer's rough log sheet is in the custody of the Bureau of Engineering, Navy Department, and is stored at the U. S. navy yard in Washington, D. C., and that the same will be produced on an order of this court.

7. This case has been set for trial for some months by special order of Judge Campbell of this court for trial before him on May 6th, 1925. The reason why an order to show cause is asked for is that I wish to give as much time as possible to respondent to produce said document.

8. I therefore respectfully ask for an order directing the respondent and the U. S. Navy Department to produce at the trial of this case said original engineer's rough log sheet of the U. S. S. "Proteus" for October 16, 1918, marked "Exhibit B for identification" at said naval court of inquiry as aforesaid.

ALLAN B. A. BRADLEY.

Sworn to before me this 28th day of April, 1925.

JAMES S. HEMINGWAY, Jr.,
Notary Public, New York County.

N. Y. Co. clerk's No. 352; reg. No. 6352.
Commission expires March 30, 1926.

333 Congressional Information Bureau (established 1897),
Mills Building, Seventeenth Street at Pennsylvania Avenue.

WASHINGTON, D. C., *April 22, 1925.*

Messrs. LORD, DAY & LORD,
25 Broadway, New York City.

(Attention Mr. Bradley.)

GENTLEMEN: Replying to your letter of April 21 in re rough engineer's log of the U. S. S. "Proteus" for October 16, 1918. We made effort today to find out the location of and inspect the log in question, but, owing to the absence from his office of the chief of the division having these engine room logs in charge, were unable to do so.

A subordinate in the office informed us that all such old logs are sent from the office and stored at the United States navy yard in this city. He declined, however, to acquaint us with the manner in which they can be inspected at that place, stating that he had never before heard of outside individuals requesting to inspect the logs of naval vessels. He, therefore, advised us to return tomorrow, when his chief is expected to be in the office, and find from the latter

official whether or not we may be permitted to see the log of the "Proteus."

This we shall do tomorrow and will report to you promptly.

Very truly yours,

CONGRESSIONAL INFORMATION BUREAU,
CLAUDE N. BENNETT, *President.*

WSM

334 Congressional Information Bureau (established 1897), Mills Building, Seventeenth Street at Pennsylvania Avenue

WASHINGTON, D. C., *April 23, 1925.*

Messrs. LORD, DAY & LORD,
25 Broadway, New York City.

(Attention Mr. Bradley)

GENTLEMEN: Referring to correspondence in re rough engineer's log, October 16, 1918, U. S. S. "Proteus": We to-day saw Commander Bowman, who has charge of the files of engineers' logs. He informed us that it is the policy of the Navy Department to withhold from public inspection all logs which are involved in litigation against the Government unless an order of the court for its production is procured or a signed order of the United States attorney in the respective case is presented.

He informed us that the log for which you asked is "in the custody of the Bureau of Engineering, Navy Department," and is stored at the U. S. navy yard, this city. He said it would take about two days to get the log desired out of the files and have it brought to the Bureau of Engineering, but if you procure an order from the U. S. attorney he would be glad to get it for that date and let us see it.

It would seem, however, that your best plan would be to procure the order of the court for the production of the log in
335 question in New York so that you yourselves may examine it and use it in the trial. In this way, of course, the order of the court would be sent to the Navy Department and the log sent to the court.

If we can help you further in the matter, please let us know.

Very truly yours,

CONGRESSIONAL INFORMATION BUREAU,
CLAUDE N. BENNETT, *President.*

WSM

In United States District Court

[Title omitted.]

Order for Production "Proteus" " Original Engineer's Rough Log Sheet

(May 1, 1925)

The libellant having moved upon the return of an order to
336 show cause for an order directing the respondent and the United States Navy Department to produce on the trial of this cause the original engineer's rough log sheet of the U. S. S.

"Proteus" for October 16th, 1918, said rough log sheet having been marked "Exhibit B for identification" at a naval court of inquiry held at the Brooklyn Navy Yard on the 21st day of October, 1918, and subsequent days, and said motion having come on to be heard, and it appearing that this cause has been set for trial in the United States District Court for the Eastern District of New York on May 6th, 1925, by order of this court, and it

Further appearing that said original engineer's rough log sheet for the U. S. S. "Proteus" for October 16th, 1918, is necessary as evidence upon the trial of this cause,

Now upon reading and filing the affidavit of Allan B. A. Bradley, verified the 28th day of April, 1925, and said order to show cause dated April 30th, 1925, and Allan B. A. Bradley having appeared in support of said motion and Charles E. Wythe, special assistant U. S. attorney in opposition thereto,

Now, on motion of Lord, Day & Lord, proctors for the libellant it is

Ordered, that if said original engineer's rough log sheet of the U. S. S. "Proteus" for October 16, 1918, marked "Exhibit B for identification" at said naval court of inquiry as aforesaid, be in existence it be produced upon the trial of this cause on May
337 6th, 1925, and that to that end Hon. Curtis D. Wilbur, Secretary of the U. S. Navy, be, and he hereby is, directed to send or cause to be sent forthwith to the clerk of this court said original engineer's rough log sheet of the U. S. S. "Proteus" for October 16th, 1918, said document to remain in the custody of the clerk of this court until the final determination of this suit and thereupon to be returned to the United States Navy Department, or in lieu of sending said document to the clerk of this court, that it be transmitted to the United States attorney for the Eastern District of New York at his office No. 45 Broadway, Borough of Manhattan, city of New York, and that the same when so received be produced by said United States attorney upon the trial of this cause on May 6th, 1925, and it is

Further ordered that service of this order be made by mailing a certified copy thereof by registered mail addressed to Hon. Curtis D. Wilbur, Secretary of the United States Navy, Washington, D. C., and that a copy thereof be served upon the United States attorney for the Eastern District of New York, proctor for the respondent.

MARCUS B. CAMPBELL,
U. S. D. J.

Notice of settlement is hereby waived.

RALPH C. GREENE,
U. S. Attorney.

338 IN UNITED STATES DISTRICT COURT,

COMMONWEALTH & DOMINION LINE (LTD.), libellant, against THE UNITED STATES OF AMERICA, respondent and cross libel	No. 5293

Opinion

(October 8, 1925)

CAMPBELL, D. J. These are cross suits in admiralty arising out of a collision between the steamship "Port Philip," owned by Commonwealth & Dominion Line (Limited), and United States steamship "Proteus," a public vessel of the United States Navy, which occurred off Nortons Point in New York Bay, October 16, 1918.

On March 4, 1923, an act of Congress was approved authorizing this suit.

339 The "Port Philip" was a single screw steamship 290 feet long over all, 49 feet beam, with a speed of 10½ knots, loaded, and carried a screw of 54 hands all told, with a master, chief, second, and third officers, and a chief, first, second and third engineers. She was bound for St. Nazaire, France, and had sailed from Boston, where she had loaded her cargo, to New York, to join a convoy, and had anchored in the convoy anchorage which was south of a line drawn from the tank on Hoffman Island to the Norton Point Light, and east of a line drawn from buoy 18, Ambrose Channel, to Fort Lafayette.

The stowage in Nos. 4 and 5 holds was steel bars 10 to 12 feet long and about 6 inches thick, running fore and aft at right angles to the impact of collision, about one-third of the way up, leveled off to the top of the shaft tunnel, and above that parts of automobiles and barb wire.

The stowage in the 'tween deck and shelter deck was similar.

The "Proteus," a collier, is a public vessel of the United States Navy.

She is a twin screw steamship, 522 feet long over all, 63 feet beam, with a speed of 14 knots.

All her officers were from the Naval Reserve, and there was no officer of the regular Navy on board on the day in question, when she was entering New York Harbor with a cargo of about 10,500 tons of coal, from Norfolk, Virginia.

The morning of October 16, 1918, was clear, with a light westerly wind, good visibility, and the tide was running ebb about 2½ knots.

The clock on the "Proteus" was evidently two minutes slower than the clock on the "Port Philip," but the clock on the "Bramble Leaf" was evidently the same as that on the "Port Philip."

On sharply conflicting facts I find as follows:

340 At 9.57 a. m. on October 16, 1918, as timed by the clock on the "Port Philip," the "Port Philip" left her anchorage where she had been anchored between the "Bramble Leaf," which was to the northward, and the "War Coppice," which was to the southward, bound out to join the convoy.

The master, a Sandy Hook pilot, and the third officer were on the bridge, with a quartermaster at the wheel. The chief officer with the boatswain and carpenter were on the forecastle head keeping a look out and standing by the anchors.

The second officer was aft observing the steering gear. All the engineers were at their stations, the chief engineer was on the starting platform, the second engineer was standing by the main engine, the fourth engineer was standing by the telegraph, and the third engineer was on duty to assist where needed.

The third officer of the "Port Philip" (Anderson) transmitted the pilot's orders from the bridge to the engine room and recorded them at the time in a small book, which was received in evidence. It was from this book that the entries would have been transcribed by Anderson in the ship's rough log when he went off watch, if the collision had not occurred.

This book was the only original contemporaneous record produced in court as all the "Port Philip's" logs went down with the ship, and the original logs of the "Proteus," although demanded, were not produced, the Navy Department reporting its inability to locate them.

The "Port Philip" proceeded ahead in a northerly direction against the tide at half speed under a slight port helm, in order to pass the "Bramble Leaf" and the "Cape Romaine," which were anchored ahead and slightly on her port bow.

341 The "Proteus" was seen by the pilot (Cannavalle), a man of long experience, who was in charge of the "Port Philip" when the "Port Philip" was getting under way, the "Proteus," then being three or four miles away, in the first leg of Ambrose Channel, proceeding up the channel at full speed and to her starboard side of the channel.

The "Port Philip" continued to proceed in a northerly direction, and when she had passed the "Bramble Leaf" and "Cape Romaine" her helm was starboarded and at 10.07 the bell for slow was given.

A steamer and sand digger, outward bound, came down on the starboard hand of the "Port Philip" to the west of the anchored vessels "Cherry Leaf" and "Cape Romaine," and the "Port Philip," as she was bound to do, allowed them to pass.

When they had passed, the helm of the "Port Philip" was put hard-astarboard and at 10.10 her engines were put full speed ahead.

The "Port Philip" turned to port to pass between the "Cape Romaine," which was anchored to the south, and the "Cherry Leaf," which was anchored to the north, these vessels and the vessels which the "Port Philip" had anchored between her and the channel

while going north after leaving her anchorage, being from 500 to 600 feet inside of the anchorage limits, there being a large number of vessels there anchored, many flying the convoy pennant.

The "Proteus" was then passing buoys 17 and 18, Ambrose Channel, was about one mile away and proceeding up the channel under full speed, about 12½ knots per hour, in charge of her master who had a pilot's license for New York Harbor, and did not have a Sandy Hook pilot aboard.

342 The master of the "Proteus" was on the bridge with the navigating officer, senior watch officer, chief quartermaster, two wheelsman quartermasters, and two signal boys. Lookouts were stationed in the forward and after crow's nests, and it is claimed in the bow but the latter was not produced.

The "Port Philip" blew a single blast longer than a short blast, the object being to have the "Proteus" hear the whistle.

The helm of the "Port Philip" was steadied and she was headed at about right angles to the channel and, no response having been received, a single blast was again blown, and no response being received, this signal was repeated twice more.

During all this time the pilot of the "Port Philip" was watching the "Proteus," expecting her to answer with a one whistle signal and pass under the "Port Philip's" stern. During all this time the "Proteus" had the "Port Philip" on her starboard hand.

After the "Port Philip" had given her fourth one blast signal the "Proteus," then about four ship lengths away, and out in the channel but to the starboard side of the center, steaming up the channel at high speed, responded with a two blast signal and turned to port, with the apparent intention of attempting to cross the "Port Philip's" bow.

The "Port Philip" immediately blew an alarm signal followed by a single blast and an alarm, and repeated these signals.

A few seconds after the "Proteus" had turned to port she came back under a port helm and swung to starboard and continued on with little or no change of speed.

343 The pilot of the "Port Philip," in an attempt to avert a collision which seemed almost certain, or at least to minimize its effect by swinging the stern of the "Port Philip" away so that she would receive the blow aft and not amidships, put her helm hard-astarboard and rang "extra full ahead."

The combined swing of the "Proteus" to starboard and the "Port Philip" to port rapidly altered the bearings of the two vessels, but the "Proteus," coming on with no apparent diminution of speed, at 10.15 by the "Port Philip's" clock, crashed into the port quarter of the "Port Philip," about 30 feet from her stern and opposite No. 5 hatch, with a blow leading aft at an estimated angle of from 45 to 70 degrees.

At the time the vessels came into contact the engines of the "Port Philip" were stopped.

The "Proteus," having remained with her stem in the "Port Philip's" quarter for about a minute, backed out because of the fear of injuring a small boat.

The engines of the "Port Philip" were ordered full ahead at 10.18, in an effort to beach her on West Bank bar, but she sank very rapidly and at 10.23 the engines were stopped as the water was then pouring into the engine room, and all hands left the ship.

The "Port Philip" was settling rapidly and made little headway, her engines were stopped for a time because of a passing vessel, and she drifted down with the tide and sank off West Bank in about 40 feet of water.

No original logs of the "Proteus" were produced, and whatever testimony was given as to the contents of such logs clearly shows that they were inaccurate. The statement of objects passed
344 while coming up the harbor, made by the navigating officers of the "Proteus," was equally inaccurate because, if correct, the collision would have occurred much further to the north than the place where it really did occur.

The contention advanced on behalf of the "Proteus," that the collision could not have happened as testified to by the pilot and officers on the "Port Philip," but did occur as testified by the officers and men called on behalf of the "Proteus," is not in my opinion sustained by the evidence, because I can see no reason why the testimony of Pilots Riker on the "War Coppice," Ackerman on the "Bramble Leaf," and Butler on the "Emanuel Noble," all of whom are disinterested men of long experience, capable of understanding and explaining the movements of the two vessels and so placed that they could observe the same, and having a reason for such careful observation, should not be accepted in preference to that of interested witnesses.

Two things stand out prominently in these cases, first that a proper lookout was not maintained on the "Proteus," and second that the master of the "Proteus" was laboring under an impression, which has been severely condemned, namely, that the right of way belongs to the ship which first signals, but even if this was the rule, the "Proteus" would not have had the right of way because the "Port Philip" had given four one blast signals before the "Proteus" gave the two blast signal.

From the time the "Port Philip" got under way her pilot saw the "Proteus," and the lookout in the forward crow's nest on the "Proteus," whose eye was 60 feet above the water, and those on the
345 bridge, whose eyes were 48 feet above the water, should have seen the "Port Philip" proceeding up to the east of the anchored ship for ten minutes and lying athwart the tide or moving out for four minutes before the "Proteus" gave the two blast signal, if a proper lookout had been maintained and the lookout in the forward crow's nest had been a seaman of sufficient experience, instead of one who had been but nine months in the Navy, and before that had been employed as a teamster.

That there was no proper lookout maintained on the "Proteus" clearly appears from the testimony of the witnesses called on her behalf, especially her master, who denies the statement of the log as to the position of the "Port Philip" when first sighted.

The failure of the "Proteus" to maintain a proper lookout violated one of the most strictly enforced obligations. (Article 29, Inland Rules; The "New York," 175 U. S., 187; The "Ariadne," 80 U. S. 475 at p. 478; The "Oregon", 158 U. S., 186; D. L. & W. R. Co. v. Central R. Co. of New Jersey, 238 Fed., 560.)

The "Proteus" having failed to maintain a proper lookout, the burden is on her to prove that the violation did not contribute to the collision. (The "New London," 271 Fed., 83, at pp. 84 and 85; The "James A. Lawrence," 117 Fed., 228; The "Madison," 250 Fed., 850.)

This she has not done, on the contrary, the explanation of the master of the "Proteus" for the lookout's not seeing that the "Port Philip" was moving up to the east of the anchored vessels, namely, that she could not be seen to be in motion because the "Proteus" was opening and closing the intervals between the anchored ships so rapidly, due to the speed of the vessel, conclusively shows
346 that with such speed an inexperienced man was not a proper lookout, and that the failure to maintain a proper lookout contributed to the collision.

The contention is also made on behalf of the "Proteus" that inasmuch as the "Port Philip" waited for the boats bound down the channel to pass, she should also have waited for the "Proteus"; but this contention does not seem to be well founded because, having the outward bound vessels on her starboard hand, the "Port Philip" was the burdened vessel and bound to keep out of their way; whereas the "Proteus" had the "Port Philip" on her starboard hand, and if the starboard hand rule applied, the "Proteus" was the burdened vessel and bound to keep out of the way of the "Port Philip."

The testimony of the master of the "Proteus" clearly shows that he thought that by first signaling with two whistles, as he claimed, he gained the right of way. This was clearly an error, which has been condemned by the courts. (The "George S. Shultz," 84 Fed., 508 at pp. 510 and 511; The "Cygnus," 142 Fed., 85, at pp. 87 and 88; The "John King," 49 Fed., 469.)

The master of the "Proteus" was also in error in his statement that the starboard hand rule did not apply because there was no room to pass under the "Port Philip's" stern, because even with the change of bearings of the two vessels immediately before the collision, there was then ample room for the "Proteus" to have passed under the "Port Philip's" stern, and there certainly was more room before that time.

Many cases are cited by the "Proteus" to show the obligation of ships leaving piers and berths, but I do not see their applica-
347 tion to the "Port Philip" as she was not leaving any slip or pier. But even if they did apply, the "Port Philip" gave notice of her intention to come out between the anchored vessels,

by the long blast signal, and after she was clear of the anchored vessels, so as to be fully in sight, she was governed by the steering and sailing rules.

If the "Proteus," when she saw that the "Port Philip" was clear of the anchored vessels, had stopped her engines, as provided by article 23 of the Inland Rules, no collision would have occurred, but in the face of such notice she continued to come on at full speed and did not hold her course but attempted to cross the "Port Philip's" bow, which was a violation of article 22 of the Inland Rules, and then as she should have done at first, attempted to go under the "Port Philip's" stern.

The "Port Philip," when she came out between the two anchored vessels, was on her course across to her starboard side of the channel, bound out to join the convoy, and the "Proteus," having her on her starboard hand, was the burdened vessel and bound to keep out of the "Port Philip's" way. (The "Edouard Alfred," 261 Fed., 680, at pp. 681 and 682.)

The "Port Philip" did not forfeit any right by sounding the signal which indicated her intention to continue on that course and pass the "Proteus" port to port, even although the "Port Philip" was not bound to give any passing signal (The "Haida," 191 Fed., 623, at pp. 625 and 626), but the "Proteus," which had the "Port Philip" on her starboard hand, was bound to keep out of the way of the "Port Philip." (Article 19, of the Inland Rules.)

348 The master of the "Proteus" claimed that the "Port Philip" should have reversed her engines when he gave the two blast signal, but this was impossible because if she had attempted any such maneuver she would, because of the effect of the ebb tide, have fouled the anchored vessel to the south.

The "Proteus" would in all likelihood have passed under the "Port Philip's" stern if she had simply continued on her course and speed, but surely would have succeeded either by swinging to starboard or stopping her engines when she gave the two blast signal.

The witnesses on behalf of the "Proteus" were clearly in error in testifying that the "Port Philip" stopped her engines and gave a three blast backing signal, but undoubtedly they were deceived as to the "Port Philip" continuing on her course by the first turning of the "Proteus" to port and then to starboard.

I accept the positive testimony of the deck and engineer officers of the "Port Philip" that she did not stop and back her engines or sound any three blast signal.

I have carefully considered the argument of the proctor for the "Proteus," supported by diagrams, but I can not accept the testimony of the witnesses on behalf of the "Proteus" as to bearings, distances, and time of the happening of the various events testified to by them, as however honest they may have been in their belief, they were but estimates, and the inaccuracies of the logs of the "Proteus" cannot be denied.

The testimony on behalf of the "Proteus" as to the time when she reversed her engines is clearly erroneous, as shown by the force with which she came into contact with the "Port Philip." I can
349 not accept the testimony with reference to the log entries as binding, due to erasures (The "Willdomino," 300 Fed., 5, at p. 12; The "Corinthian," 11 Asp. M. C. [N. S.], 208), but in my opinion the engines of the "Proteus" were put in reverse at or immediately before she gave the three blast signal, which was the last one given.

The turning to port of the "Proteus" was noticeable and the swing to starboard could not have instantly followed the turning to port, as contended on behalf of the "Proteus," but there must have been an appreciable interval, and this was a large factor in bringing about the collision, because even if the "Proteus" did not as was claimed on her behalf respond to this movement, it was so much time lost in swinging to starboard, which was her proper maneuver, and it is worthy of note that the order for left rudder was not entered in the log but brought out later.

The starboard hand rule and not the rule of special circumstance was applicable, as the "Port Philip" was on a course and not coming out from a slip or berth, and the "Proteus" was the burdened vessel.

The "Port Philip" was without fault.

The "Proteus" was at fault for not maintaining a proper lookout and for failing to, at once, stop and reverse her engines, and for attempting to cross the "Port Philip's" bow instead of going under her stern.

A decree in the first suit may be entered in favor of the libellant, Commonwealth & Dominion Line (Limited) against the respondent, United States of America, with costs and the usual order of reference.

350 A decree may be entered in the second suit in favor of the respondent, Commonwealth & Dominion Line (Limited), against the libellant, United States of America, for costs.

Settle decrees on notice.

MARCUS B. CAMPBELL,
U. S. D. J.

In United States District Court

Opinion disallowing interest on damages

C. & D. Line v. U. S. A.

CAMPBELL, D. J.: This action is brought under the provisions of an act approved March 4, 1923 (Private No. 256, 67th Congress—H. R. 8051), which act, after providing that the action may be brought in this court sitting as a court of admiralty, provides so far as is necessary for consideration in the action at bar, as follows: "and said court shall have jurisdiction to hear and determine such suit to the extent only of such damages suffered, other than claims for demurrage to

said vessel, and to enter a judgment or decree for the amount of such damages and costs, if any, as shall be found to be due against the United States in favor of the British steamship "Port Philip" or against said owner in favor of the United States, upon the same principles and measures of liability as in like cases in admiralty between private parties and with the same rights of appeal."

351 I have already, by my opinion rendered October 8, 1925, found in favor of Commonwealth & Dominion Line (Ltd.), and against the United States of America, but further question is now presented with reference to interest. The said Commonwealth & Dominion Line (Ltd.), contends that by the terms of the said enabling act, under which this action is brought, it is entitled to interest on the amounts of damages as stipulated, but this is denied by the United States of America.

I have, heretofore, considered the same question under an act which was substantially the same in the case of "Nippon Yusen Kabushiki Kaishu," my opinion in that case having been filed in the clerk's office of this court on May 7, 1926, and, for the reasons in that opinion set forth, I find that Commonwealth & Dominion Line (Ltd.), is not entitled to interest under the enabling act in the action at bar.

A decree may be entered for the damages as stipulated, with costs but without interest.

MARCUS B. CAMPBELL,
U. S. D. J.

352 In United States District Court

COMMONWEALTH & DOMINION LINE (LTD.), AS OWNER OF THE steamship "Port Philip," libellant against UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "Proteus," respondent	5283
UNITED STATES OF AMERICA, AS OWNER OF THE STEAM COLLIER "Proteus," cross libellant against COMMONWEALTH & DOMINION LINE (LTD.), AS OWNER OF THE steamship "Port Philip," cross respondent	5858

Final decree and stipulation (July 14, 1926)

An interlocutory decree having been entered herein on Octo-
353 ber 30, 1925, directing that the libellant, Commonwealth & Dominion Line (Ltd.), recover herein its damages sustained by reason of the matters and things alleged in its libel, as provided in the act of Congress, approved March 4, 1923, entitled "An act for the relief of the Commonwealth & Dominion Line (Ltd.), owner of the British steamship 'Port Philip,'" and the damages

sustained by said libellant having been stipulated in the sum of six hundred sixty-five thousand nine hundred seventy-three and 41/100 ($665,973.41) dollars, as appears by the stipulation annexed hereto, and the costs of said libellant having been duly taxed in the sum of $361.00;

Now, upon motion of Lord, Day & Lord, proctors for libellant, Commonwealth & Dominion Line, (Ltd.), it is

Ordered, adjudged, and decreed that the libellant, Commonwealth & Dominion Line (Ltd.), recover of and from the respondent, United States of America, the sum of $665,973.41 damages, without interest, together with the sum of $361.00, its costs as taxed, amounting in all to the sum of $666,334.41; and it is further

Ordered, adjudged, and decreed, that the cross libel herein of United States of America be and the same hereby is dismissed.

MARCUS B. CAMPBELL,
U. S. D. J.

354

STIPULATION

[Titles omitted.]

It is stipulation by and between the respective parties that the damages sustained by libellant, Commonwealth & Dominion Line (Ltd.), by reason of the matters and things set forth in the libel herein are as follows:

1.	Value of the steamship "Port Philip"	$638,594.00
2.	Bunker coal aboard steamship "Port Philip"	16,333.26
3.	Stores aboard steamship "Port Philip"	2,859.38
355 4.	Clothing and effects lost by crew and made good by owners	5,284.11
5.	Tug hire surveying wreck	128.75
6.	Hire of apparatus and service of diver for examination of wreck	160.00
7.	Board, lodging, and expenses of officers and crew of steamship "Port Philip"	1,596.05
8.	Expenses of master of "Port Philip"	861.00
9.	Expenses of crew in distress	156.86
	Total	665,973.41

It is further stipulated, without prejudice to the rights of either party on appeal, that in the event interest is allowed by the court on the foregoing items the same shall be computed to the date of the final decree herein from the following dates, respectively:

Item No. 1. Interest from October 16, 1918.
Item No. 2. Interest from October 16, 1918.
Item No. 3. Interest from October 16, 1918.
Item No. 4. Interest from December 1, 1918.
Item No. 5. Interest from November 29, 1918.
Item No. 6. Interest from December 6, 1918.
Item No. 7. Interest from December 1, 1918.
Item No. 8. Interest from December 15, 1918.
Item No. 9. Interest from October 29, 1919.

Dated, New York, N. Y., June 30, 1926.

LORD, DAY & LORD,
Proctors for Libellant, Commonwealth & Dominion Line (Ltd.)
WILLIAM A. DEGROOT,
Proctor for Respondent, United States of America.

356 In United States District Court

[Titles omitted.]

Notice of appeal

SIRS: Please take notice that the United States of America, respondent and cross libellant herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree of this court entered herein July 14, 1926, and from each and every part of said decree.

Dated, New York, N. Y., September 28, 1926.

357 Yours, etc.,

WILLIAM A. DEGROOT,
United States Attorney for the Eastern District of New York,
Proctor for United States of America.

Office & post office address: Room 708, 15 Broadway, Borough of Manhattan, city of New York.

To PERCEY G. B. GILKES, Esq.,
Clerk, United States District Court,
Eastern District of New York.

Messrs. LORD, DAY & LORD,
Proctors for Commonwealth & Dominion Line, Ltd.,
No. 25 Broadway, New York City.

358 In United States District Court

[Titles omitted.]

Assignments of error

United States of America, as owner of the U. S. steam collier "Proteus," respondent and cross libellant herein, hereby assigns error to the decision and to the final decree of the United States District Court for the Eastern District of New York entered herein on July 14, 1926, as follows:

1. In that the District Court found that the "Port Philip" blew the first signal which was one long blast when she was coming out between the anchored vessels, and blew four separate one
359 blast signals before the "Proteus" replied; and that the "Proteus" then sounded a signal of two blasts and turned to port.

2. In that the District Court found that after the two blast signal of the "Proteus," the "Port Philip" blew an alarm signal followed by a single blast and an alarm and repeated the same, and that in an attempt to avert a collision she put her helm hard astarboard and rang extra full ahead, whereas the court should have found that the "Port Philip" stopped and backed her engines and gave a three blast backing signal.

3. In that the District Court failed to find that the "Proteus" sounded a signal of two blasts just before the "Port Philip" sounded

her first signal of one blast, to which latter the "Proteus" immediately replied with one, and then made every possible effort to pass astern of the "Port Philip" in accordance with the agreement, but was prevented therefrom by the act of the "Port Philip" in reversing her engines, thereby making compliance by the "Proteus" impossible.

4. In that, although the District Court found that the "Port Philip" was clear of the anchored vessels when the two blast signal of the "Proteus" was blown, the court found that it was impossible for the "Port Philip" to have then reversed her engines because she would have fouled the anchored vessel to the south.

5. In that the District Court found that the "Port Philip" was clear of the anchored vessels and fully in sight, whereas the court should have found that she was emerging from a concealed position between said vessels.

360 6. In that the District Court found that the "Port Philip" was on a definite course within the meaning of the starboard hand rule when she was emerging from between other vessels in the anchorage, was rounding to and maneuvering to get into the channel.

7. In that the District Court found that with the change of bearings of the two vessels immediately before the collision there was ample room for the "Proteus" to pass under the "Port Philip's" stern and there was more room before that time.

8. In that the District Court found that the "Proteus" kept an improper lookout, whereas it should have been found that the "Port Philip" was seen by the "Proteus" as soon as could be expected of a competent and proper lookout.

9. In that, although the District Court found that the "Proteus" attempted to pass astern of the "Port Philip" in compliance with the one blast signal of the "Port Philip," the court found that the master of the "Proteus" acted under the impression that the right of way belongs to the ship which first signals.

10. In that the District Court found that the testimony on behalf of the "Proteus" as to the time she reversed her engines is erroneous.

11. In that the District Court refused to accept the testimony of witnesses for the "Proteus" as to bearings, distances, and times because they were estimates.

361 12. In that the District Court found that the facts testified to by the "Proteus" witnesses are not sustained by the evidence, whereas the facts as found by the court on the testimony of the "Port Philip's" witnesses are physically impossible.

13. In that, although the District Court held that the starboard hand rule applied, and that the "Port Philip" was the privileged vessel, and found that the "Port Philip" put her engines extra full speed ahead and helm hard astarboard, and stopped her engines before collision, the court failed to hold the "Port Philip" at fault, in that she did not keep her course and speed.

14. In that the District Court held that the starboard hand rule applied and that the "Proteus" was the burdened vessel, whereas it should have held that the situation was one of special circumstances.

15. In that, although the District Court found that the collision occurred while the "Proteus" was attempting to pass astern of the "Port Philip," it held the "Proteus" at fault for attempting to cross the "Port Philip's" bow.

16. In that, although the District Court found that the "Proteus" would have passed under the stern of the "Port Philip" if she had simply continued on her course and speed, the court held the "Proteus" at fault for failing at once to stop and reverse her engines.

17. In that the District Court held that the "Port Philip" was without fault.

18. In that the District Court failed to hold the "Port Philip" at fault for not keeping a proper lookout.

362 19. In that the District Court failed to hold the "Port Philip" at fault for proceeding into the channel from an obscured position at full speed when the "Proteus" was in dangerous proximity.

20. In that the District Court failed to hold the "Port Philip" at fault for attempting to cross the bow of the "Proteus" without first receiving an agreement therefor.

21. In that the District Court failed to hold the "Port Philip" at fault for reversing her engines after receiving an agreement from the "Proteus" to pass port to port.

22. In that the District Court granted a decree in favor of the Commonwealth & Dominion Line (Ltd.).

23. In that the District Court dismissed the libel of the United States of America.

24. In that the District Court held the "Proteus" solely at fault for the collision.

25. In that the District Court failed to hold the "Port Philip" solely at fault.

WILLIAM A. DEGROAT,
United States Attorney for the Eastern District of New York,
Proctor for United States of America.

Office & P. O. address, Room 709, 45 Broadway, Borough of Manhattan, city of New York.

363 In United States District Court

[Title omitted.]

Notice of appeal

SIR: Please take notice that Commonwealth & Dominion Line (Ltd.), libellant and cross-respondent herein, hereby appeals to the United States Circuit Court of Appeals for the Second Circuit

304 from that portion of the final decree of this court entered herein July 14, 1926, which disallowed interest.

Dated, New York, October 11, 1926.

Yours, etc.

LORD, DAY & LORD,
Proctors for Commonwealth & Dominion Line (Ltd.).

Office & post office address, 25 Broadway, Borough of Manhattan, city of New York.

To PERCY G. B. GILKES, Esq.,
Clerk U. S. District Court, Eastern District of New York.
WILLIAM A. DEGROOT, Esq.,
U. S. Attorney for the Eastern District of New York,
Proctor for the United States of America.

305 In United States District Court

[Titles omitted.]

Assignments of error

Commonwealth & Dominion Line (Ltd.), as owner of the steamship "Port Philip," libellant and cross-respondent herein, hereby assigns error to the decision and to the final decree of the United States District Court for the Eastern District of New York entered herein on July 14, 1926, as follows:

In that the District Court failed to award and decree to the libellant interest upon the damages.

LORD, DAY & LORD,
Proctors for Commonwealth & Dominion Line (Ltd.), Libellant.

Office & P. O. address, 25 Broadway, Borough of Manhattan, city of New York.

306 In United States District Court

[Titles omitted.]

Stipulation re exhibits

It is hereby stipulated that libellant's Exhibits 4 to 9, inclusive (photographs of steamship "Port Philip"), libellant's Exhibit 10 (chart), libellant's Exhibit 12 (notebook), libellant's Exhibits 2, 3, and 4, in evidence, and 5, for identification, deposition of Wallace (photographs), libellant's Exhibit 16 (transcript of "Proteus" log), and Government's Exhibit 1 (chart), deposition of Spanoil, and respondent's Exhibit H (chart) need not be printed in the
307 record on appeal herein, but may be handed up to the court at the argument with the same force and effect as if the same had been originally printed herein.

Dated, New York, October 25, 1926.

LORD, DAY & LORD,
Proctors for Commonwealth & Dominion Line (Ltd.).

WILLIAM A. DEGROOT,
Proctor for United States of America.

368 In United States District Court

[Titles omitted.]

Stipulation re record

It is hereby stipulated and agreed that the foregoing is a true transcript of the record in the above-entitled suit as agreed upon by the parties.

Dated, New York, December 9, 1926.

LORD, DAY & LORD,
Proctors for Commonwealth & Dominion Line (Ltd.).

WILLIAM A. DEGROOT,
Proctor for United States of America.

369 Clerk's certificate to foregoing transcript. (Omitted in printing.)

370 In United States Circuit Court of Appeals for the Second Circuit

No. 300—October term, 1926.

Argued May 9, 1927. Decided July 19, 1927.

Commonwealth & Dominion Line Limited, as owner of the steamship "Port Philip," libelant-appellee, v. United States of America, as owner of the steam collier "Proteus," respondent-appellant.

United States of America, cross-libelant-appellant, v. Commonwealth & Dominion Line (Limited), cross-respondent-appellee.

Appeal from the District Court of the United States for the Eastern District of New York.

Before Manton, L. Hand, and Swan, circuit judges.

Opinion.

Appeal by the United States from a decree of the District Court for the Eastern District of New York, holding solely at fault the steamship "Proteus" for a collision with the steamship "Port Philip" in the waters of the lower bay in the port of New York.

On October 16, 1918, the eastern part of the lower bay above the north end of Ambrose Channel was filled with some 15 or 20 ships at anchor, waiting their turn in convoy to carry merchandise to Europe. The last buoy on the eastern boundary of that channel is about southwest of the end of Norton Point, Coney Island, and the boundary line, if projected northwards, would fall close to the bell buoy off Fort Hamilton. This was the limit of the anchorage grounds, from

which the nearest ships were anchored some 500 or 600 feet off, so as not to swing in the tide across the line to the embarrassment of navigation.

The "Proteus," a United States collier, 522 feet long, entered the Ambrose Channel that morning at a speed of about 12½ knots, and steamed up on the easterly side of the channel at a distance from the marking buoys variously estimated by the witnesses. At a point about opposite Norton Point, she came into collision with the "Port Phillip," which had come out between two anchored steamers and was headed across the channel, down which she meant to steam on her way to join her convoy. The bow of the "Proteus" struck the port quarter of the "Port Phillip" about 30 feet forward of her stern at an angle of about 70 degrees, and did such damage that she sank within 10 minutes, before she could be beached on the West Bank.

The "Port Phillip" had been at anchor on the anchorage ground some distance south of the point of collision. Having been notified that day that she was to join a convoy, she flew a convoy signal, then customary in such cases, weighed anchor, and, being headed northward on the ebb tide, got under way at slow speed, so as to pick her way among the anchored ships that surrounded her. Coming
371 opposite an opening between two anchored vessels nearest the channel, she starboarded and waited to let several vessels pass down the channel ahead of her; then hard-astarboarding she came full around, so as to head through the opening and across the channel. At this time, 10.10, her engines were put full speed ahead. This course she maintained substantially unchanged until the collision, which occurred somewhere in the channel at 10.15.

As is usual in such cases, the signals and positions of the vessels were much disputed at the trial. However, both admitted that when the "Proteus" first saw the "Port Phillip" as her bow began to come out from between the two anchored ships, she blew twice and her bridge gave the order to starboard. Shortly thereafter she hard-aported and swung to starboard, coming into collision. That she was in reverse at the time is conceded, but her speed was probably not very much reduced, since the collision cut deeply into the other vessel. The "Proteus" contended that the "Port Phillip" first answered her double blast with one, and later blew a backing signal and reversed her engines. The "Port Phillip" contended that she gave the "Proteus" four separate signals of one blast each, beginning at the moment when she came out between the vessels, to the last of which alone the "Proteus" answered with her two-blast signal, which she in turn answered with a single blast. She denied that she blew a backing signal at any time, or that she ever reversed her engines. The "Proteus" put the place of collision on the easterly edge of the anchorage ground; the "Port Phillip" at least 1,000 feet further west.

The District Court, who heard most of the "Port Phillip's" witnesses, though only the master of the "Proteus," found that the

"Port Phillip" had given the signals which she said she had, held that the starboard hand rule applied, that the "Port Phillip" was without fault, and that the "Proteus" was at fault for failing to keep a sharp lookout, for trying to cross the "Port Phillip's" bows, and for keeping on instead of at once backing, if she could not pass under her stern. He did not find the precise place in the channel where the collision occurred.

Emory R. Buckner, U. S. atty., and Charles E. Wythe, sp. asst. U. S. atty., of New York City, for the "Proteus."

Allan B. A. Bradley and George De Forest Lord, both of New York City, for the "Port Phillip."

L. Hand, circuit judge. The "Port Phillip" had been in motion for at least 15 minutes before the collision, during all of which time she was or ought to have been plainly visible to the "Proteus." The suggestion that the cluster of anchored ships in which she moved prevented this is quite without merit. True, her movement was slow, but even a slowly moving ship may be detected among others at anchor, indeed more readily than when she is alone. Her motion becomes the more evident because of the vessels close beside her, and the idea that they could blot her out is incredible. The further to the eastward the course of the "Proteus" lay, the more imperative was the duty of her lookout, for common caution should have anticipated that among so many ships one might be moving out to a convoy. To confess that she only saw the "Port Phillips" as her bows came out from between the vessels further west, was to admit at least one serious fault.

But her faults did not stop there. When the "Port Phillip" did come out she was the privileged ship, it was a crossing case. The effort to make it one of special circumstances depends upon the assertion that the "Port Phillip" was not on a steady course. The "Washington," 241 F. 952 (C. C. A. 2); The "Transfer No. 17," 254 F. 673 (C. C. A. 2); The "Newark," 289 F. 801 (C. C. A. 2). It involves a misconception of the meaning of that phrase. A ship is on a steady course, not only when her heading does not change, but whenever her future positions are certainly ascertainable from her present position and movements. A steady course may thus involve many changes of heading; it is enough if these can with accuracy be foretold. If they can, so that at any given time in the future her position can be ascertained, she is on a course, and if that course crosses the course of another vessel, who holds her on her starboard hand, the latter must keep out of her way. Whether the way be sinuous, or the speed variable, makes no difference, so it be plainly disclosed. It is well settled that this applies to head-on cases in a winding channel. The "Victory," 168 U. S. 410, 419, 421, 18 S. Ct. 149, 42 L. Ed. 519; The "Arrow," 214 F. 744, 745 (C. C. A. 2). The rule is the same in England. The "Velocity," L. R. 3 P. C. 44; The "Pekin," [1897] L. R. App. Cas. 532. The "Roanoke,"

372 11 Asp. M. C. 253 (C. A.), applied it as well to a crossing case, where the privileged vessel was held without fault, though she stopped to take on a pilot, that maneuver being apparent from her position and course.

The "Port Phillip's" movements might have been fairly evident to the "Proteus" from the moment she weighed anchor, if her lookout had done his duty. She carried a convoy signal, and could hardly have had any other intent than to come into the channel and steam down the bay. However, if it be thought that this is too much to imply from the signal alone, she had headed westerly between the anchored ships plainly bent upon entering the channel for five minutes before the collision, beginning at a time when the "Proteus" was necessarily over a mile away. For that period her heading did not change, and the "Proteus'" duty was fixed from then on, whatever it had been before. She had plenty of opportunity to discharge that duty and her failure was without excuse. The "Port Phillip," on the other hand, had a duty to keep her course and speed, which she did. We accept the finding that she at no time reversed, supported as it is by the testimony of her crew, though her log was sunk with her. It is true that the witnesses on the "Proteus" all say that she blew a backing signal after getting the "Proteus'" single blast. The probabilities are all against such navigation. It is agreed that the "Port Phillip" by her answer of a single blast refused the "Proteus'" proposal to cross her bows. This meant that she expected the "Proteus" to go under her stern. To back under such circumstances would have been in direct contradiction of her indicated purpose; we do not believe that her bridge so far lost their heads.

Thus it seems to us of little consequence just where the collision took place, or where in the channel the "Proteus" was coming up. In fact, the great weight of testimony puts it at least 1,000 feet away from the anchored vessels, which gave room for the "Proteus" to port under the "Port Phillip's" stern, had she acted with decision. On her own version she vacillated, due no doubt to her surprise at the emergency suddenly thrust upon her. How much that vacillation contributed to the result it is quite impossible to say, for its extent is in sharp dispute, and the district judge, though he has found that the "Proteus" did first fall off to port, has not said how much. The extremes on either side are probably incorrect. Certainly there was the strongest possible motive for each to press or eliminate the effect of this feature of the case. At any rate it is conceded that there was a delay in porting, and, as the ships nearly cleared, a very short delay may have been critical. It is plain that this may account for the failure of the "Proteus" to accomplish her duty in spite of an ample berth in which to do so.

As is common in such cases, the advocates have prepared elaborate calculations based upon the testimony, and each proving his own case. We can not take these very seriously, based as they must be

upon biased recollection of exciting events not capable of accurate record. It is true that the speeds of the two vessels are established; they were as five is to two, for the tide, as in all such cases, is a factor common to both and must be disregarded. All we can see in these endeavors is that the "Proteus" must be put further to the south when she first sighted the "Port Phillip," in proportion as we move the collision further to the west. Nothing follows from this except to discredit one estimate of distance or the other, when all are notoriously unreliable.

We take but two examples. If the collision was 1,000 feet from the anchored vessels, when the stern of the "Port Phillip" passed between them the bow of the "Proteus" was a little less than 2,500 feet to the south of the point of collision. There is no impossibility in that. If we fix the collision at 1,500 feet from the same line, the "Proteus'" distance becomes somewhat more than 3,500 feet. We need only accept a small part of the equivocal maneuvering of the "Proteus" to account for the collision even after she had traveled so far. Moreover, it seems to us, if we are to allow any seamanship to Hansen, that he must have been a good distance to the west of the anchored ships when he tried to cross the "Port Phillip's" bows. Had he been 2,000 feet to the south, and yet close to the eastern edge of the channel, it was foolhardy to try what he did.

The most probable explanation is that the "Proteus" through inattention was suddenly faced with a ship on her starboard hand, whose speed and course she could not at once appraise. The natural instinct to turn away from danger suggested to her a starboard helm, though this was contrary to her duty. When the situation became clearer and the "Port Phillip" rejected the proposal,
373 she tried to remedy her initial blunder by hard-aporting, but it was then too late. In such a situation we should not be jealous to find faults in the other ship, under well-settled rules.

Of the faults charged against the "Port Phillip" the most plausible is her asserted failure to keep the "Proteus" constantly in view after she first sighted her far down the channel, when she herself was leaving her moorings. It is possible that she did not keep her under observation. This might be a serious matter in other situations, but here we think that it was not. Knowing her own proposed course, she must have known that she would be on the "Proteus'" starboard hand when the time for action arrived, and she was quite within her rights in assuming that the "Proteus" would be prepared to do her duty at that time. She had no alternative in any case but to keep her course and speed, and her actual movements should have been exactly what they were, had her lookout done nothing but fix his eyes on the "Proteus" from the moment she was first seen. It can therefore be said that, even if the fault be taken as proved, it could have had no effect in the result. The suggestion that she should have waited till the "Proteus" at 12½ knots had passed up the channel is too unreasonable for dis-

cussion. The notion that the situation required something in the nature of a slip whistle has no basis in the books.

There remains only the question whether she should have given the alarm when the "Proteus" blew to her twice. The "Proteus'" intentions were certainly clear as soon as she blew. It was a proposal to cross the "Port Phillip's" bows. That proposal she rejected, though she need not have done so, and the "Proteus," as in duty bound, hard-aported. If she heard the accompanying single blast, which she denies, the "Proteus'" course was again evident to her. If she did not, then the rule might apply, but she had, even so, nothing to do but to keep on as fast as possible, and it is entirely clear that an alarm would have done nothing to change the movements of the "Proteus," which was then tardily doing what she could to avoid the disaster. Therefore, even granting the two charges made against her, which we accept as such only for the sake of argument, they could not have contributed to the collision. In any case, the "Proteus" was far too gravely involved to stand upon such problematical derelictions.

The district judge refused to allow interest, our decision in The "Esperanza," 16 F. (2d) 945, not being then decided. A distinction is raised, in that the special act of Congress allowing this suit permits a recovery "to the extent only of * * * damages suffered other than claims for demurrage to said vessel." "Demurrage" does not mean interest on the "damages suffered," but the loss of the vessel's use while under repair. It is true that there could be no demurrage here, because the "Port Phillip" sank, and this circumstance the United States seizes upon as indicating that the word must mean interest. It must be conceded that the limitation has no application to this case, but it is so inapt to cover interest on the damages that we can not suppose it to have been used in that sense. Moreover, we are to assume, until the contrary is shown, that the United States meant to do full justice to the wronged owner.

Decree modified, by allowing interest, and, as modified, affirmed.

374 In United States Circuit Court of Appeals, Second Circuit

Commonwealth & Dominion Line (Ltd.), libellant-appellee, v. United States, respondent-appellant (and cross action)

Decree. Filed July 27, 1927

Appeal from the District Court of the United States for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Eastern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be and it hereby is modified by allowing interest, and as modified, affirmed.

It is further ordered that a mandate issue to the said District Court in accordance with this decree.

M. T. M.

T. W. S.

[File endorsement omitted.]

376 In United States Circuit Court of Appeals

[Titles omitted.]

Petition for rehearing

Appellant, United States of America, respectfully prays a rehearing in this case upon the following grounds.

1. That the conclusions of fact found by this court and upon
377 which its decision is based conflict with admitted facts in the record and are in conflict with one another.

2. Upon admitted facts in the record and also upon the court's own findings of fact, the starboard hand rule, as interpreted by the court, cannot properly be applied.

3. Upon the facts found, the exoneration of the "Port Phillip" is contrary to the well settled law of this circuit.

4. The allowance of interest is in contravention of well settled rules of statutory construction.

The particulars of the grounds above stated are specified briefly as follows:

A. The place of collision is most important, since it determines whether the "Proteus" had room to pass safely astern of the "Port Phillip" and, in this respect, whether the starboard hand rule should be applied.

The "Proteus" was coming up on her own starboard (easterly) side of the channel. This is testified to positively by the "Proteus" witnesses (Hansen, fol. 392; McGee, 827; Wallace, 655-6; Breed, 759). It is also admitted by the "Port Phillip's" witnesses. (Cannavale, 275; Jack, 161; Hall, 234.) This is binding upon both parties and upon the court. It is the key to the whole situation because the porting of the "Proteus" and the admitted angle of striking necessarily place the collision farther to the eastward than her original course. This positively disproves the story of the "Port Phillip" witnesses and compels a finding that the collision occurred
378 close to the anchorage ground as "Proteus'" witnesses testify and the cross bearings taken by Wallace definitely show (fols. 673-4).

It follows that there is no basis for the finding by this court that the "Port Phillip," at five knots speed, "had headed westerly between the anchored ships five minutes before the collision" (p. 6). It is apparent that the court entirely overlooked this point, for it says (p. 6):

"Thus it seems to us of little consequence just where the collision took place or where in the channel the "Proteus" was coming up."

B. When the "Port Phillip" passed between the anchored vessels she was heading about northwest, and was coming around on a starboard helm.

This is the testimony of her own pilot (Cannavale, fols. 274, 276) and is uncontradicted by anything in the record. There is no basis at all in the record for the finding of this court that

"* * * she had headed westerly between the anchored ships plainly bent upon entering the channel for five minutes before the collision. * * * For that period her heading did not change, and the "Proteus" duty was fixed from then on, whatever it had been before." (Opinion, p. 6.)

This is very important to a correct decision of the case because it is apparent from its written opinion that the court, in applying the starboard hand rule, did so under a misapprehension of the facts.

C. Previous to the time when she emerged, the "Port Phillip" was inside the anchorage ground, heading northerly and
379 waiting for two southbound vessels to pass down the channel. (Cannavale, fols. 247-8.)

Although this court found accordingly (opinion, p. 2), it apparently lost sight of this fact in condemning the lookout kept by the "Proteus," for the court charges the "Proteus" with fault in failing to see the "Port Phillip" while in the anchorage ground before she emerged. This, in effect, holds her at fault for failure to anticipate that the "Port Phillip," in the anchorage ground, heading parallel to her and at rest or nearly so, would, without notice of her intention, come ahead with engines at full speed and round to across the "Proteus'" course. To impose such a duty is to require the exercise of almost superhuman ability.

D. Although this court limits the application of the starboard hand rule to a situation where changes of course and speed by the holding on vessel must be capable of being accurately foretold, saying, "whether the way be sinuous or the speed variable make no difference so it be plainly disclosed." (Opinion, p. 5.) It applies the rule to this case notwithstanding the established facts in the record (paragraph B, supra), and the court's own finding (opinion, p. 8) that the "Proteus" "was suddenly faced with a ship on her starboard hand *whose speed and course she could not at once appraise*." (Italics ours.)

At that time, when the "Port Phillip" was coming into the fairway, the vessels were under necessity of navigating with reference to each other to avoid collision, and, upon the court's own finding, the "Port Phillip's" course and speed were not "plainly dis-
380 closed." For this reason the rule as interpreted by the court should not apply.

It is apparent, however, that the court did apply the rule at that point, for it continues (p. 8)

"The natural instinct to turn away from danger suggested to her a starboard helm, *though this was contrary to her duty*." (Italics ours.)

After this point, and after the vessels had begun to manoeuvre to avoid collision, the court says (p. 8):

"*When the situation became clearer* and the "Port Phillip" rejected the proposal, she ("Proteus") tried to remedy her initial blunder by hard aporting but it *was then too late*." (Italics ours.)

E. Since the court finds that when the "Port Phillip" rejected the proposal of the "Proteus" and insisted upon the "Proteus" passing astern, it was too late for the "Proteus" to avoid collision by porting, it must necessarily follow that the "Port Phillip," in rejecting the proposal, insisted upon an impossible manoeuvre. This she had no right to do even under the starboard hand rule. In The "Sunnyside," 91 U. S., 208, 222, the Supreme Court said:

"Cases arise in navigation where a stubborn adherence to a general rule is a culpable fault, for the reason that every navigator ought to know that rules of navigation are ordained not to promote collisions but to save lives and property by preventing such disasters."

381 And as also said by this Court in The "Mauch Chunk," 154 Fed., 182, 183-4:

"A perverse adherence to the rules is not justifiable when it is manifest that such a course is certain to result in disaster."

Notwithstanding its own finding that when the "Port Phillip" rejected the proposal of the "Proteus" it was too late for the latter to comply, this court has characterized the suggestion by counsel that the "Port Phillip" should have waited for the "Proteus" to pass as "too unreasonable for discussion." (Opinion, p. 9.)

A failure of the "Port Phillip" to keep a proper lookout, even though a privileged vessel, is a clear fault under the law in this circuit. (The "Comus," 1927, A. M. C., 860, 864-5; The "New York," 175 U. S., 187, 205; The "Albert Dumois," 177 U. S., 240.) In view of her stubborn insistence upon a manoeuvre that she should have seen was impossible, the conclusion of this court (p. 9) that a failure to closely observe the "Proteus" "could have had no effect in the result" is not justified in fact.

F. The conclusion of the court that the "Proteus" "vacillated" (p. 6) and that "there was a delay in porting" (p. 7) is not sustained by the court's own findings (p. 9) that:

"The "Proteus" intentions were certainly clear as soon as she blew. It was a proposal to cross the "Port Phillip's" bows. That proposal she rejected, *though she need not have done so* and the "*Proteus*," *as in duty bound hard aported*." (Italics ours.)

382 Upon this finding there is no delay or vacillation on the part of the "Proteus." The proposal itself was not unlawful. (The "Chicago," 125 Fed., 712; "The George S. Schultz," 84 Fed. 508.) Until its rejection, which according to the evidence, came at once, there was no duty on the "Proteus" to hard aport, and the court has found as a fact that she did so upon receiving such rejection.

G. In allowing interest upon libellant's damages the court has apparently ignored the settled rules of statutory construction that

all of the statute shall be given effect wherever possible. (Montclair Township v. Ramsdell, 107 U. S., 147, 152; Bend v. Hoyt, 13 Pet., 263; Kohlsaat v. Murphy, 96 U. S., 153.)

The statute here considered is a special act applied to this case alone. Hence it is hardly meet to say that any portion of it was not intended to apply to the facts involved. The express limitation of the jurisdiction to "damages suffered other than claims for demurrage to said vessel" must be given effect by the court, if possible. Although it is true that, as stated in the opinion (p. 10) "demurrage does not mean interest on the damages suffered," the term is reasonably capable of a much less constricted meaning than "loss of the vessel's use while under repair." The term "demurrage" has been repeatedly defined as "damages for loss of profits or use of a vessel." The "Conqueror," 166 U. S., 110, 125; The "Mount Hope-Navesink," 1925 A. M. C., 1318, 1324 and cases cited.)

Where a vessel is a total loss, as was the "Port Phillip,"
383 the loss of use or profits (demurrage) is compensated for by the allowance of interest on her value. (The "Fontana," 119 Fed., 853, 861; The "Hamilton," 95 Fed., 844, 845; Roscoe on Damages in Maritime Collisions, second edition, page 47.)

Since the limitation contained in the act is reasonably capable of such construction the court should so apply it.

Finally, we submit that the holding of this court, that "we are to assume, until the contrary is shown, that the United States meant to do full justice to the wronged owner," is in conflict with the settled rule that statutes conferring jurisdiction upon the court are to be strictly construed in favor of the government. U. S. v. North American Co., 253 U. S., 330, 336; U. S. v. Verdier, 164 U. S., 213; Schillinger v. U. S., 155 U. S., 163, 166; Reid Wrecking Co. v. U. S., 202 Fed., 314; Reid v. U. S., 211 U. S., 529; U. S. v. Dalcour, 203 U. S., 408.)

Wherefore, your petitioner respectfully prays that a rehearing of the appeal herein be granted.

WILLIAM A. DEGROOT,
United States Attorney, Proctor for Petitioner.

384 I hereby certify that the foregoing petition for rehearing is filed in good faith and not for any purpose of delay and that the same is, in my judgment, meritorious and well founded.

CHARLES E. WYTHE,
Special Assistant to the United States Attorney,
Counsel.

385 United States Circuit Court of Appeals, Second Circuit

[Title omitted.]

Order denying petition for rehearing. Filed August 17, 1927.

A petition for a rehearing having been filed herein by counsel for the appellant;

Upon consideration thereof it is

Ordered that said petition be, and hereby is, denied.

M. T. M.

T. W. S.

387 [Clerk's certificate to foregoing transcript omitted in printing.]

[File endorsement omitted.]

388 Supreme Court of the United States

Order allowing certiorari. Filed December 12, 1927.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the second circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. And it is further ordered that the discussion shall be limited to the question of the allowance of interest on the amount of the recovery, the consideration thereof to await the decision of this court in the case of Boston Sand & Gravel Co. vs. The United States, No. 551, October term, 1927.